

***United States Court of Appeals
for the Second Circuit***



APPENDIX

77-1268

RECEIVED

B P/S

In The
United States Court of Appeals
For The Second Circuit

UNITED STATES OF AMERICA,

Appellee,

v.

ALLAN SONNENSCHIN,

Defendant-Appellant.

*On Appeal From the United States District Court For the
Southern District*

APPENDIX FOR APPELLANT

IRVING ANOLIK

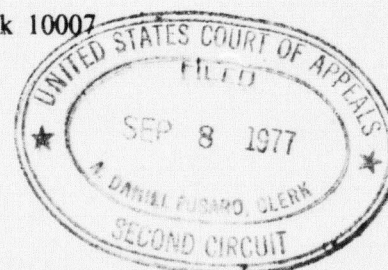
Attorney for Defendant-Appellant

Allan Sonnenschein

225 Broadway

New York, New York 10007

(212) 732-3050



PAGINATION AS IN ORIGINAL COPY

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1a

DOCKET ENTRIES

0208.1	0364	ALLAN SONNENSCHIEIN	(pp. 1a-3a)	12 22	76	1141	02
OFFENSES CHARGED				ORIGINAL COUNTS			
21:846	Consp. to violate Federal Narcotics Laws			1			
21:812, 841(a)(1) & 341(b)(1)(B)	Distr. & possess. of Methaqualone, II			2			
21:846	Consp. to violate Federal Narcotics Laws			1			
21:812, 841(a)(1) & 841(b)(1)(B)	Distr. & possess. of Methaqualone, II.			2			
KEY DATES & INTERVALS				SUPERSEDING COUNTS			
ARREST	INDICTMENT	ARRAIGNMENT	TRIAL	SENTENCE			
*12/15/76	12-22-76	12-30-76	12-30-76				
U.S. Custody Received	Information	12-30-76	12-30-76				
U.S. Custody Released	U.S. District	3-31-77	12-30-76				
First Appearance	In Charging District	3-31-77	12-30-76				
MAGISTRATE				OUTCOME			
SEARCH WARRANT	DATE	INITIAL NO.	INITIAL APPEARANCE DATE	12/15/76	LB-08AH	DISMISSED	
Summons	12/15/76	LB-08AH	PRELIMINARY EXAMINATION OR REMOVAL HEARING	1/4/77	LB-08AH	HELD FOR OR OTHER PROCEEDING IN DISTRICT	
Summons Served	12/15/76	LB-08AH	HELD FOR OR OTHER PROCEEDING IN DISTRICT	1/4/77	LB-08AH	HELD FOR OR OTHER PROCEEDING IN DISTRICT	
Summons Served	12/15/76	LB-08AH	HELD FOR OR OTHER PROCEEDING IN DISTRICT	1/4/77	LB-08AH	HELD FOR OR OTHER PROCEEDING IN DISTRICT	
COMPLAINT	12/15/76	LB-08AH	HELD FOR OR OTHER PROCEEDING IN DISTRICT	1/4/77	LB-08AH	HELD FOR OR OTHER PROCEEDING IN DISTRICT	
OFFENSE	21 U.S.C. §§ 841(a)(1) and 846 - NARCOTICS						
U.S. Attorney of Area				ATTORNEYS			
Peter Noel Duhamel 791-1921				David S. Jacobs 16 Court St Bklyn, N.Y. 11241			

TRIFFLEMAN-01

DATE	DOCUMENT NO.	PROCEEDINGS	RECORDABLE DELAY
12/15/76		Complaint filed, represented by Mr. David Jacobs, 16 Court St., Brooklyn, N.Y. 11241. Deft. released on \$10,000 personal recognizance bond. Deft.'s address: 258-18 149th Rd., Rosedale, N.Y.	
12-22-76		INDICTMENT FILED 76 CR 1141.....Carter, J.	
12-30-76		Deft. (atty. David S. Jacobs present) pleads not guilty. Deft.'s bail, ie., \$10,000 PRB continued. Case assigned to Goettel, J. for all purposes.....Griesa, J.	
1-4-77		Fld notice of appearance of David S. Jacobs as atty for deft	
2-1-77		Pre-trial conference held. Atty for deft present. TRIal date scheduled for 3-7-77 at 10 A.M. ...Goettel, J.	
3-7-77		D ft & atty present Jury Trial begun	
3-8-77		Trial continued	
3-9-77		Trial continued, & concluded Jury Deliberating	
3-10-77		Trial continues Jury deliberating- Jury cant agree- Hung Jury- Judge declares a mistrial Case to be retried 4-4-77..Goettel, J	

page 2		IV PROCEEDINGS (continued)	PAGE TWO	V EXCLUDABLE DELAY
3-28-77	File affid & notice of motion for an order dismissing the indictment ret 4-4-77			
3-31-77	Filed Superseding Indictment & referred to Goettel, J. Metzner, J.			
4-6-77	Filed govt's trial memorandum of law			
4-4-77	Pre-trial conference held adj trial to Wednesday 10:00 A.M. Goettel, J.			
4-6-77	Motion granted by the Court dismissing the original indictment & case will go forward on the superseding indictment... Goettel, J.			
4-6-77	Deft & atty Steven Laifer present. Deft enters a N/G Plea, Motion by Govt dismissing the original indictment GRANTED. Trial will commence as to deft Sonnenschein on this (S) indictment only Jury trial begun ... Goettel, J.			
4-7-77	Trial continues, & atty David Jacobs is now counsel for deft... Goettel, J.			
4-8-77	Trial continues			
4-11-77	Trial continues Both sides sum up & court charges at 11:15 A.M.			
4-12-77	Jury deliberating continues			
4-13-77	" " " " " Jury panel starts their deliberations			
4-14-77	" " " " " and have found the deft Guilby as charged in count 1. Jury resumes deliberations as to count 2. Jury cannot reach a verdict as to count 2. Judge declares a mistrial as to count 2. Pre-sentence investigation ordered. Date of sentence scheduled for May 24, 1977. Bail \$10,000 FRB to be co-signed by deft's wife..... Goettel, J.			
4-14-77	Filed appearance bond in the amount of \$10,000 FRB Dated 12-15-76			
4-19-77	Filed deft's affid & notice of motion for an order dismissing the indictment ret 4-4-77 (rec'd motion 4-19-77)			
4-19-77	Filed memo end on motion filed 4-19-77- Motion denied for reasons stated in open Court.... Goettel, J. M/N			
4-27-77	Deft & atty Herbert Dermin present. Sentence imposed Sentence adj to May 4, 1977 9:30 A.M. ... GOETTEL, J.			
5-23-77	Filed deft's affirmation & notice of motion for an order vacating the Judgment & conviction... ret 5-24-77			
5-31-77	Filed Transcript of Record of proceedings dated 4-4-77			
5-11-77	Sentence adj to May 17, 1977 at 4:30 P.M.... GOETTEL, J.			
5-17-77	Sentence adj with one week for motions.... GOETTEL, J.			

-CONTINUED ON PAGE 3)

UNITED STATES DISTRICT COURT
CRIMINAL DOCKET U.S. vs ALLAN SONNSCHEIN

page 3

CLG

76 1141

2

Yr. Docket No. Def

DATE	PROCEEDINGS (continued)	V. EXCLUDABLE DELAY			
		(a)	(b)	(c)	(d)
5-24-77	Filed JUDGMENT & COMMITMENT Deft (atty Steven Laifer present) The deft is hereby committed to the custody of the atty General or his authorized representative for imprisonment for a period of THREE (3) YEARS ON COUNT 1 pursuant to section 3651 of Title 18, U.S.C., as amended with provision that deft be confined in a JAIL TYPE or treatment institution for a period of THREE (3) MONTHS as provided in the aforesaid section. Execution of the remainder of the prison sentence is suspended & the deft is placed on probation for a period of THREE (3) YEARS to commence upon expiration of confinement, subject to the standing probation order of this Court. Deft is also sentenced to a THREE (3) YEAR SPECIAL PAROLE, Pursuant to Title 18 United States Code, Section 841, to run concurrently with proba. Count 2 is DISMISSED on deft's motion with consent of the Govt.....GOETTEL, J. Copies issued (ant 6-1-77)				
5-26-77	Filed notice of appeal from the judgment of conviction entered on the 24th day of May 1977 (Mailed notice to deft's atty & U.S. Atty)				

AU 256A

Interval (per Section 11) Sign Date End Date Lit. Totl Cost Dev

INDICTMENT
(Filed December 22, 1976)
UNITED STATES DISTRICT COURT (pp. 4a-7a)
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

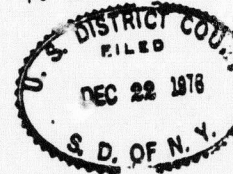
- v -

LESLIE TRIFFLEMAN and
ALLAN SONNENSCHNEIN,

Defendants.

INDICTMENT

76 Cr.



COUNT ONE

The Grand Jury charges:

1. From on or about the 3rd day of December, 1976, and continuously thereafter up to and including the date of the filing of this indictment, in the Southern District of New York, LESLIE TRIFFLEMAN and ALLAN SONNENSCHNEIN, the defendants and others to the Grand Jury unknown, unlawfully, intentionally and knowingly combined, conspired, confederated and agreed together and with each other to violate Sections 812, 841(a)(1) and 841(b)(1)(B) of Title 21, United States Code.

2. It was part of said conspiracy that the said defendants unlawfully, intentionally and knowingly would distribute and possess with intent to distribute Schedule II narcotic drug controlled substances the exact amount thereof being to the Grand Jury unknown in violation of Sections 812, 841(a)(1) and 841(b)(1)(B) of Title 21, United States Code.

OVERT ACTS

In pursuance of the said conspiracy and to effect the objects thereof, the following over acts were committed in the Southern District of New York:

MICROFILM

DEC 22 1976

1. On or about December 3, 1976, LESLIE TRIFFLEMAN and ALLAN SONNENSCHNEN, the defendants, met two individuals at the Burg-a-Cue Coffee House, on Second Avenue at the corner of 79th Street, New York, New York.

2. On or about December 3, 1976, LESLIE TRIFFLEMAN and ALLAN SONNENSCHNEN, the defendants sold approximately 1000 dosage units of Methaqualone for ^{300 D.H.B.} ~~800.00~~ ^{D.H.B.} ~~1,000.00~~.

3. On or about December 8, 1976, the defendant TRIFFLEMAN had a conversation concerning the sale of ^{400 D.H.B.} ~~5000~~ dosage units of Methaqualone at approximately 9:30 A.M.

4. On or about December 8, 1976, the defendant TRIFFLEMAN had a telephone conversation at approximately 12:05 P.M.

(Title 21, United States Code, Section 846.)

COUNT TWO

The Grand Jury further charges:

On or about the 3rd day of December, 1976, in the Southern District of New York LESLIE TRIFFLEMAN and ALLAN SONNENSCHNEN, the defendants, unlawfully intentionally and knowingly did distribute and possess with intent to distribute a Schedule II narcotic drug controlled substance, to wit, Methaqualone, with a net weight of approximately 205.38 grams.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(B); Title 18, United States Code, Section 2.)

Donella H. Bennett
FOREMAN

Robert B. Fiske, Jr.
ROBERT B. FISKE, JR.
United States Attorney

West T. [unclear] [unclear] [unclear] [unclear]
 Not [unclear] [unclear] [unclear] [unclear] "C. [unclear]" [unclear]
 only. [unclear] [unclear] [unclear] [unclear]
 [unclear] [unclear] [unclear] [unclear] [unclear] [unclear]
 [unclear] [unclear] [unclear] (1967 P.B.) [unclear] [unclear]

Wgt. [unclear] [unclear] [unclear] [unclear]
Jury trial begun on the other defendant

MAR 5 1977

MAR 5 1977

Trial continues (Conclusion)
Trial continues (Jury deliberating)
Trial continues
 - Jury can't agree. Hung Jury - Judge declares a mista
 Case to be re-tried Apr. 4, 1977

APR 4 1977

Pre. Trial Conference held
 adj. trial date to Wednesday 10 AM

APR 6 1977

Motion granted by the Court dismissing
 the original indictment and Case -
 will go forward on the superseded indictment

Form No. USA-220-576 (Rev. 9-25-59)
United States District Court
SOUTHERN DISTRICT OF NEW YORK
THE UNITED STATES OF AMERICA

vs.
LESLIE TRIFFLEMAN and
ALLAN SONNENSCHNEN,

Defendants.

INDICTMENT

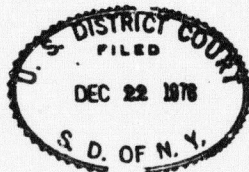
76 Cr.

(Title 21 United States Code,
Sections 812, 841(a)(1),
841(b)(1)(B), 846; Title 18,
United States Code, Section 2.)

ROBERT B. FISKE, JR.
United States Attorney.

A TRUE BILL

Donella H. Bennett
Foreman.



Indictment filed
12-30-76 - Dept. Leslie Triff
(Atty. Herbert Gorman present)
Not guilty. Bail \$10,000
Dept. Allan Sonnen
(Atty. David S. Jacobs) Plea
not guilty. Assigned Judge
for all purposes. Dept. bail
\$10,000. PAB, continued. g
Dries

Feb. 1, 1977 - Pre-Trial Conference held. Attorneys
for both defendants present. Trial
date scheduled for March 7, 1977

GOETZ

3-7-77 Bill Dept. Leslie Triff
Sonnen
attorney for Dept. Plaintiff. Jury
prejudice (omit)

PND:zdd
12-818

INDICTMENT
(Filed March 31, 1977)
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
(pp. 8a-12a)

UNITED STATES OF AMERICA

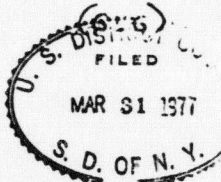
- v -

LESLIE TRIFFLEMAN and
ALLAN SONNENSCHNIN,

Defendants.

INDICTMENT

S 76 Cr. 1141



COUNT ONE

The Grand Jury charges:

1. From on or about the 5th day of November, 1976, and continuously thereafter up to and including the 1st day of February, 1977, in the Southern District of New York, LESLIE TRIFFLEMAN and ALLAN SONNENSCHNIN, the defendants, and others to the Grand Jury unknown, unlawfully, intentionally and knowingly combined, conspired, confederated and agreed together and with each other to violate Sections 812, 841(a)(1) and 841(b)(1)(B) of Title 21, United States Code.

2. It was part of said conspiracy that the said defendants unlawfully, intentionally and knowingly would distribute and possess with intent to distribute Schedule II controlled substances, to wit, methaqualone, the exact amount thereof being to the Grand Jury unknown, in violation of Sections 812, 841(a)(1) and 841(b)(1)(B) of Title 21, United States Code.

OVERT ACTS

In pursuance of the said conspiracy and to effect the objects thereof, the following overt acts were committed in the Southern District of New York:

1. On or about December 3, 1976, LESLIE TRIFFLEMAN and ALLAN SONNENSCHN, the defendants, met two individuals at the Burg-a-Cue Coffee Shop, on Second Avenue at the corner of 79th Street, New York, New York.

2. On or about December 3, 1976, LESLIE TRIFFLEMAN and ALLAN SONNENSCHN, the defendants sold approximately 300 dosage units of Methaqualone for \$900.

3. On or about December 8, 1976, at approximately 9:30 A.M. the defendant LESLIE TRIFFLEMAN had a telephone conversation concerning the sale of Methaqualone.

4. On or about December 8, 1976, at approximately 12:05 P.M. the defendant LESLIE TRIFFLEMAN had another telephone conversation concerning the sale of Methaqualone.

(Title 21, United States Code, Section 846.)

COUNT TWO

The Grand Jury further charges:

On or about the 3rd day of December, 1976, in the Southern District of New York LESLIE TRIFFLEMAN and ALLAN SONNENSCHN, the defendants, unlawfully intentionally and knowingly did distribute and possess with intent to distribute a Schedule II controlled substance, to wit, Methaqualone, with a net weight of approximately 90.87 grams.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(B); Title 18, United States Code, Section 2.)

Leo Argostini
FOREMAN

Robert B. Fisk, Jr.
ROBERT B. FISK, JR.
United States Attorney

at 11:15 AM Jury Panel start their deliberations

at 12:15 PM Jury Deliberating continues.

APR 13 1977

APR 14 1977

and have found the defendant "Guilt" as charged in Count 1.
Jury resumed deliberations as to Count 2.
Jury cannot reach a Verdict as to Count 2. Judge declared a Mistrial on

Count 2. Pre-Sentence Investigation

Ordered. Date of sentence scheduled for May 24, 1977. Bail \$10,000 P.R.S. to be co-signed by defendant's wife.

APR 27 1977

Deft. Leslie Triffleman, and atty. Herbert Dier
Present - Sentence Imposed. Sentence a
to May 4. 9:30 AM. Guettel, J.

May 3 - Deft. Leslie Triffleman and atty. Present -
sent. adj. to May 12, 1977 at 9:30 AM.

May 11 - Sentence adj. - May 17, at 4:30 PM. Guettel, J.

May 17 - Sentence adj. with one week for
motion. Guettel, J.

MAY 24 1977

Deft. William James, present, and atty.
Attorney Liefer (present) - Sentence Imposed
(3) yrs. Impr. Sallares by (3) yrs. I.P. Reimann to
Sent 3657 Rule 18, depts. be confined in a jail to
sent. for 3 mos. E.S.S. Deft. on Prob. for a
Period of 3 yrs.

i-16-77 Wpht Leslie To, Hemen and aty
Q. Student Hemen present. E. S. S.
Wpht please in Pres. for a piece of 2 yr.
Gentle, J.
h

(5) 1202 1177

United States District Court
SOUTHERN DISTRICT OF NEW YORK
THE UNITED STATES OF AMERICA

vs.

LESLIE TRIFFLEMAN and
ALLAN SONNENSCHN

Defendants.

INDICTMENT
S 77 Cr.

(In violation of Title 21, United States
Code, 812, 841(a)(1), 841(b)(1)(B); and
Title 18, United States Code, Section
2.)

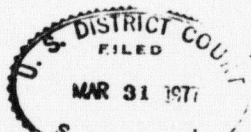
ROBERT B. FISKE, JR.

United States Attorney.

A TRUE BILL

Leo Agostini

Foreman.



3-31-77 - 7 Ued Indictment and referred
to Roettel J. as being related to and
superceding Indictment 76 Cr. 1141 (GLG)

Metzner

4-6-77 Left Leslie Triffleman and atty
Herbert Deiman, present. Left with
a Not Guilty Plea and return a Guilty
Plea to Count 2 of their Indictment
Date of Verdict 4-22-77 at 11:30 AM.
Jury - 6000 P.R.B. continued.

APR 6 1977 Left Allan Sonnenschein, and atty
Stephen L. Fox present. Left with a
Not Guilty plea.

Motion by the Government dismissed.
The original Indictment granted.
Trial will commence on the left.
Sonnenschein on the Indictment on
Jury Trial, he goes as to left Sonnenschein.

APR 7 1977 Trial Continued, and atty David
is now counsel for left.

APR 8 1977 Trial Continued.

APR 11 1977 Trial Continued Both,

EXCERPTS FROM TRANSCRIPT OF PROCEEDINGS DATED
APRIL 6, 7, 8, 11, 12 & MAY 24, 1977
64 (pp. 13a-107a)
Triffleman-cross

100

1 jg:mg 21

2 THE COURT: Yes.

3 Q You just told the judge you did.

4 MR. DUHAMEL: Objection. That is not what the
5 testimony is.

6 THE COURT: Mr. Laifer, you are the one who uses
7 the word "solicited."

8 MR. LAIFER: I don't know any other word, your
9 Honor.

10 THE COURT: Well, the word has a lot of connota-
11 tions to it. We are not using it.

12 Did you sell Quaaludes to anyone other than
13 Carol Clifford?

14 MR. LAIFER: That was not my question.

15 THE COURT: I know. But I'm trying to get to
16 the heart of this.

17 MR. LAIFER: Yes.

18 THE COURT: Were there other sales besides to
19 Carol Clifford?

20 THE WITNESS: Yes. Sure.

21 THE COURT: How did you meet or learn of these
22 people to whom you sold the other amounts?

23 THE WITNESS: Through people I knew, word of
24 mouth, things like that.

25 MR. LAIFER: Thank you very much, your Honor.

1 jg:mq 22

70 Triffleman-cross

2 Q Now, I want the names of the people that you
3 just said, people, word of mouth -- I want the anmes of those
4 people. Please give them to us.

5 A Of the people that I sold? I don't really
6 understand.

7 THE COURT: Well, what he wants to know is, if
8 you sold to Jane Doe, how did you learn that Jane Doe
9 was interested in buying? Who told you that Jane Doe
10 might want Quaaludes.

11 Am I correct that that is the line?

12 MR. LAIFER: That is exactly right, your Honor.

13 A Allan gave me the name Steve. That was one.

14 Q You remember Allan's name. All right.

15 That's one. Now let's name some other ones that
16 gave you leads that you could ave customers from.

17 A There wen't all that many customers. It is
18 just not that way at all.

19 THE COURT: How many customers were there?

20 THE WITNESS: Very few. And it just didn't come
21 like from soliciting.

22 THE COURT: More than five or less than five?

23 THE WITNESS: Less than five, I'm sure. Mostly
24 I gave the pills to Allan and he took them and did with them --

25 Q Allan did everything?

1 jq:mg 23

71

Triffleman-cross

2 A I didn't say that. But you are talking other
3 than Carol Clifford.

4 Q Well, now--

5 A You are trying to loke refer to something that
6 just didn't exist. I mean, you know, soliciting. It is
7 just not the right impression.

8 Q It is notthe right impression? The Novarro
9 incident was a freak, is that right?

10 A First of all, I believe her name is Novello.

11 Q Novello. It is your customer.

12 MR. DUHAMEL: Objection, your Honor.

13 THE COURT: Yes. I think we are going to ex-
14 cuse the jury for a few minutes now.

15 The jury will take a brief recess. Do not
16 discuss the case.

17 (The jury left the courtroom)

18 MR. DUHAMEL: May the witness be allowed to go
19 in the witness room?

20 THE COURT: She can in a minute, but I need her
21 first on this thing.

22 Mr. Laifer, I am trying to give you reasonable
23 latitude for vigorous cross-examination in what I realize
24 is a crucial witness, but you are abusing it. Please watch
25 yourself.

1 jg:mg 24

Triffleman-cross

2 MR. LAIFER: Sorry, your Honor. I agree with
3 the Court.

4 THE COURT: All right.

5 Before we let the witness go, let's get back to
6 this question of this document and your motion with respect
7 to it.

8 As I recall your testimony, Ms. Triffleman, Ex-
9 hibit 1 for identification, which is the document contain-
10 ing your handwriting and the defendant's handwriting, and
11 various information concerning licensing procedures for con-
12 trolled substances, you say that he gave this to you back
13 in November of 1967?

14 THE WITNESS: No, I did not say that. That was
15 a piece of paper that belonged to me, that I had, that
16 I left my possession.

17 THE COURT: I see. And were you ever instructed
18 to give this to any attorney by the defendant?

19 THE WITNESS: No, no. That's my paper.

20 THE COURT: Do you want to ask some questions,
21 then, Mr. Laifer? I don't see the basis of your motion
22 here.

23 MR. LAIFER: Your Honor, I must apologize to
24 the Court. I was mistaken.

25 THE COURT: You had it confused with another

1 jg:mg 25

73

Triffleman-cross

2 document?

3 MR. LAIFER: It is not Mr. Duhamel's fault, be-
4 cause I believe he had told me that.

5 THE COURT: Yes. He stuck up for himself very
6 nobly in the last exchange.

7 MR. LAIFER: Ignobly.

8 THE COURT: The objection to Exhibit 1 is over-
9 ruled. The witness will be excused for a few moments.

10 And you have another motion now?

11 MR. LAIFER: Yes.

12 (Government's Exhibit 1 received in evidence)

13 MR. LAIFER: Your Honor, I respectfully move
14 for a mistrial on the grounds that the evidence as prof-
15 fered from this witness as to an ultimate source of the
16 Quaaludes being other than from Dr. Miller; that is the
17 Rorer Company, is totally inconsistent with the first
18 count of the indictment, the conspiracy count, where no
19 such action is alleged and it is totally inconsistent with
20 the force of the conspiracy count as alleged by the govern-
21 ment.

22 As it is set forth, your Honor, I respectfully
23 submit at best what would be-- what we would have here would
24 be two separate and distinct conspiracies; one, a conspiracy
25 to obtain the controlled substance from a Dr. Miller, and

xx

1 jg:mg 26

Triffleman-cross

2 the second conspiracy to obtain a product from the Rorer
3 Laboratory itself.

4 I respectfully submit, your Honor, that two
5 separate conspiracies, as a matter of law, have not been set
6 forth in the indictment, have not been alleged by the gov-
7 ernment, or voted by the grand jury in this case, and
8 therefore the mistrial should be declared.

9 THE COURT: Motion denied.

10 The indictment does not refer to the sources at
11 all of the methaqualone. It merely says that it was a part
12 of the conspiracy that they would distribute and possess
13 with intent to distribute methaqualone.

14 There is nothing in here to indicate that they
15 were engaged in a conspiracy with Dr. Miller or that they
16 intended to wholesale the stuff from Rorer or anything of
17 that nature, and while they could have brought in a conspiracy
18 indictment name, Dr. Miller, even if they had, he was an
19 essential part of the Rorer purchases also.

20 So I just don't see anything to your motion
21 whatever and the motion is denied.

22 MR. LAIFER: As your Honor said, he is a neces-
23 sary element. He is not even named as an unindicted co-
24 conspirator.

25 THE COURT: The indictment reads that they

1 jg:mg 27 73 19a Triffleman-cross 106
2 conspired with others to the grand jury unknown.

3 Now, as you and I both know, when the original
4 indictment was returned, Dr. Miller's involvement in this
5 was unknown. At the last trial his name came out and
6 his involvement became known.

7 It is true that the indictment was superseded
8 to correct certain technical errors in the original indict-
9 ment, but I don't know of any requirement that they go out
10 at that point and just shove Dr. Miller into it.

11 I will agree with you I would be most surprised
12 if the government did not take some steps with respect to
13 Dr. Miller. But that is his problem and not yours.

14 MR. LAIFER: But I would urge, your Honor, that
15 this is a witness known. They say "witnesses unknown."

16 THE COURT: Well --

17 MR. LAIFER: I think one more application, Judge.
18 Your Honor has ruled, and so be it.

19 I would ask Mr. Duhamel, is there any other ad-
20 ditional Jencks material since the last case other than the
21 material he gave me concerning Leslie Triffleman?

22 THE COURT: That is a fair question.

23 MR. DUHAMEL: It is.

24 Your Honor, I would be willing to hand over the
25 grand jury testimony. Although it wasn't Ms. Triffleman, it

1 jg:mg 28

Triffleman-cross

2 related to certain information. It was of John DeGravio.
3 I don't think that falls specifically within 3500, but we
4 are willing to give that over.

5 In fact, it was an oversight on my part that
6 he had not been provided with it at this point.

7 THE COURT: Please give it to him.

8 MR. DUHAMEL: And there is also a copy of some-
9 thing that he has seen before in the last trial, and that
10 is the allocution before your Honor on March 8, I think.

11 MR. LAIFER: I was there. I don't need that.

12 MR. DUHAMEL: The only other thing is the
13 appearances here.

14 (Recess)

15 (Jury present)

16 THE COURT: Exhibit 1 may be received in
17 evidence.

xx 18 (Government's Exhibit 1 received in evidence)

19 MR. LAIFER: Thank you, sir.

20 CROSS-EXAMINATION (continued)

21 BY MR. LAIFER:

22 Q Now, Ms. Trifflemen, you say that it was late
23 November of 1976, that was the first time you and Allan
24 entered into this agreement to deal with these Quaaludes?

25 A No, I didn't say that.

1 jg:mg 29

Triffleman-cross

2 Q When was the first time that you entered into
3 this agreement?

4 A This particular agreement about ordering di-
5 rectly and being partners and selling it?

6 Q Yes.

7 A It was approximately the end of the first week
8 in November.

9 Q You had never dealt in any other controlled
10 substance with Allan in October of 1976, had you?

11 A In October of 1976?

12 Q Yes.

13 A I'm not sure. I don't think so.

14 Q Or ever before that at any time?

15 A With Allan, before?

16 Q With Allan, this defendant?

17 A Yes.

18 Q You had done it before?

19 A With Allan, yes.

20 Q When?

21 A In September of 1976.

22 Q And when before that, if ever?

23 A The end of June of 1976, just before I went in
24 the hospital. Yes, the end of June.

25 Q And what about before that?

78

jg:mg 30

Triffleman-cross

1

2

A I believe April. I think that is correct.

3

Q And before that?

4

A I think the beginning was in December of 1975.

5

Q The beginning was December of 1975?

6

A I believe that is correct.

7

Q Do you know a doctor by the name of Minkoff,

8

Jeffrey Minkoff?

9

A Yes.

10

Q And tell the jury when you first met a doctor

11

by the name of Jeffrey Minkoff?

12

A I would imagine 1972.

13

Q And did you do pills with him?

14

MR. DUHAMEL: Objection to the form, your

15

Honor.

16

THE COURT: Well, yes.

17

You can rephrase it a little bit better than

18

that.

19

Q Did you get prescriptions from him?

20

MR. DUHAMEL: She has indicated s-e does take
pills. I just objected to the form of the question.

22

THE COURT: Did you get prescriptions for persons
other than yourself from Dr. Minkoff?

23

24

THE WITNESS: Never.

25

Q Tell the jury, between the year of 1972 to

1 jg:mg 31

Triffleman-cross

2 December of 1975, how many prescriptions you obtained from
3 Dr. Minkoff?

4 A I don't know.

5 Q Was it more 100?

6 A More than

7 Q Yes, more than 100?

8 A No.

9 Q Was it more than 75?

10 A What is the period now?

11 Q Between 1972 and December of 1975?

12 A No, not more than 75.

13 Q Approximately. Try and approximate. You
14 don't have to be exact. How many prescriptions do you say
15 you got from Minkoff?

16 MR. DUHAMEL: Objection, if he is asking her
17 to guess, your Honor.

18 THE COURT: She can give us her best recollec-
19 tion. But it is unclear to me whether we are talking about
20 prescriptions for her own treatment or for some other use.

21 MR. LAIFER: I'll get into that, your Honor.

22 THE COURT: All right.

23 A I don't really know a number. 50. I don't know.

24 Q And was that for Percodan?

25 A Yes.

1 jg:mg 32

Triffleman-cross

2 Q And was it for Quaaludes?

3 A No.

4 Q Tell us the drugs that they were for.

5 A They were for Valium, Percodan and Seconal.

6 Q You didn't have anything to do with Allan during
7 that period of time, did you, as far as selling any of
8 these controlled substances, is that right?

9 A As far as selling them? No.

10 During which period of time?

11 Q Between 1972 and December of 1975.

12 A There was no selling Quaaludes then, no.

13 Q The question is, you say you started with Allan
14 in December of 1975, is that right?

15 A I went to the doctor for Quaaludes in December
16 of 1975, yes.

17 Q And between 1972 and 1975 you got about 50
18 prescriptions, you say, from Dr. Minkoff, is that correct?

19 A I assume. I don't really know how many. I don't
20 know.

21 Q Did you give any of those pills to anyone?

22 A Yes.

23 Q And you knew that that was a crime, didn't you?

24 A No.

25 Q Who did you give those pills to?

1 jg:mg 33

Triffleman-cross

2 A Allan.

3 Q Allan; between 1972 and 1975?

4 A Yes, I did. In the summer of 1974, I started to
5 give Allan Percodan.

6 Q What about Aida Weiner?

7 A Yes, I gave pills to Aida Weiner also.

8 Q She is your roommate, isn't that right?

9 A No.

10 Q A friend of yours?

11 A She is a friend of mine.

12 Q Did she give you money for those pills?

13 A No.

14 Q You jsut gave them out to her, is that correct?

15 A Yes.

16 Q Name the other people to the jury that you gave
17 pills to between 1972 and 1975?

18 A That I gave pills to?

19 Q Yes.

20 A Allan and --

21 Q I am not talking about aspirins now. I mean
22 Percodans, Valiums, pills of that nature.

23 A The people I gave those pills to are Allan and
24 Aida.

25 Q The only two?

1 jg:mg 34

Triffleman-cross

2 A As far as I recall, yes.

3 Q Could there have been others?

4 A I don't know. I don't know.

5 Q Well --

6 A I mean--

7 MR. LAIFER: May I have one moment, please, your
8 Honor?

9 Q What about Ronnie Waxman?

10 A What about him?

11 Q Did you give any pills to Ronnie Waxman between
12 1972 and 1975?

13 A I don't know a Ronnie Waxman.

14 Q Did you ever hear the name?

15 A From that book.

16 Q That is the first time you ever heard the name?

17 A Right. I don't know any Ronnie Waxman.

18 Q What about Marty Sachs?

19 A I don't know a Marty Sachs.

20 Q What about a Marco Beruff?

21 A I don't know--

22 Q You don't know anybody by that name?

23 A I don't know anybody like that.

24 Q What about David Wisner, do you know a David

25 Wisner?

1 jg:mg 35

Triffleman-cross

2 A Who?

3 Q David Wisner, W-i-s-n-e-r?

4 A No.

5 Q You have heard the names, haven't you?

6 A From that book I saw the names.

7 Q And who gave you this book?

8 A Allan.

9 Q Why did he give you this book?

10 A For my protection, I guess. I don't know.

11 Q What do you mean, your protection? Explain that.

12 A After we had been arrested--

13 Q Yes?

14 A -- Allan had given to me the cards, the index
15 cards, the drug salesman's card, this book, as some leverage
16 in case we were arrested again or something like that.

17 Q What do you mean, some leverage? What do you
18 mean by that?

19 A He had 62 of the 63 books. I had nothing.

20 Q No, no. What was the leverage you are talking
21 about? Why would he give you a book for leverage? What
22 was the purpose of it, if he gave it to you?

23 A He had 62 of them. I didn't have any. What he
24 planned to do with the books, he planned to do with them,
25 but I didn't have them.

* * *

jgmch 8

Triffleman - cross

table; is that right?

A Yes.

Q And Allan was with you then; is that correct?

A He was sitting across from me, yes.

Q And at that time you had a discussion with Carol; is that right?

A Yes.

Q Did you say, "Are you Carol?", words to that effect?

A Yes.

Q And she said, "Yes. Are you Leslie?"

A Yes, something like that.

Q Did she say, "You got the stuff?"

MR. DUHAMEL: Objection, your Honor.

A She never said that.

Q Well, did you ask who the guy with her was?

A No. She introduced him as a friend or something.

Q Were you at all concerned?

A I didn't know to be concerned. Had I known to be concerned, it wouldn't have happened, the sale.

Q You mean you would have been more careful?

A It would not have happened. I wouldn't knowingly sell to a narcotics agent.

1 jgmch 9

Triffleman - cross

2 Q Well, Miss Triffleman, you handed a pill to
3 one, didn't you?

4 A I handed a pill to someone that I knew to be
5 John, not a narcotics agent.

6 Q Now, there is no question that you handed a
7 pill across the table to him; is that right?

8 A Right.

9 Q Didn't he ever take a paper bag from you,
10 open it up, bend over, look in it and take pills out
11 and scan them?

12 A I didn't see him do that, no.

13 Q When he gave money to Allan, did Allan ever
14 fan the money out?

15 A Never fanned the money out. He put the
16 money in his pocket uncountered.

17 Q And if Agent DiGravio said he fanned money
18 out --

19 MR. DUHAMEL: Objection.

20 THE COURT: Yes. Sustained. The form is not
21 proper.

22 You know where you are going with the question.
23 It is not proper.

24 MR. LAIFER: May we approach the side bar,
25 your Honor?

1 jgmch 10

Triffleman - cross

2 THE COURT: No.

3 Rephrase your question.

4 Q The money was put directly into the pocket;
5 is that correct?

6 A Yes.

7 Q He never counted it.

8 A Correct. Allan did it as a good faith move.

9 Q Good faith?

10 A Right.

11 He didn't want to show him counting the money
12 and he didn't want to show the money to anybody in the
13 restaurant.

14 Q What did it have to do with good faith?

15 A With good faith? Well, two things.

16 He didn't want John, who he intended to have
17 future dealings with, to think that he was going to sit
18 and count out the money in public, and he didn't want to
19 expose the money to the restaurant.

20 Q Tell the jury the total time that elapsed
21 from the time that John and Carol sat down until John
22 handed money to Allan. How much time?

23 A The total time?

24 A Anywhere from five to ten minutes, I would say,
25 talking.

jgmch 36

Triffleman - recross

No, I don't know that. I'm sorry, but
I don't know that.

MR. LAIFER: I have no further questions.

THE COURT: All right. You are excused.

(Witness excused)

THE COURT: The jury is excused for the day.

MR. LAIFER: Excuse me. Sorry, your
Honor.

May we approach for one second?

THE COURT: Do you need the witness?

Can I let the jury go?

MR. LAIFER: No, no. Would you hold the jury
for just one moment?

THE COURT: All right.

(Discussion off the record at the side bar)

(In open court)

THE COURT: With the permission of the
defendant, he is having a new trial counsel starting
tomorrow and Mr. Laifer will not be with us tomorrow,
and he wanted you to know that he would not be with us
because he has to be out of the country, and there will
be somebody else taking up the trial tomorrow.

MR. LAIFER: Although not Yugoslavia, your
Honor.

1 jgmch 37 139 32a 170
2 THE COURT: But the jury is excused for the
3 evening.

4 Do not discuss the case.

5 10:00 o'clock tomorrow morning in the jury
6 room.

7 (The jury left the courtroom.)

8 THE COURT: I want to get one thing on the
9 record now, however.

10 First, that your departure tomorrow is with
11 the permission of your client.

12 MR. LAIFER: Yes.

13 THE COURT: Is that so, Mr. Sonnenschein?

14 THE DEFENDANT: Yes, your Honor.

15 THE COURT: And, secondly, that someone
16 from your firm will be here in the morning to continue
17 this trial.

18 MR. LAIFER: Mr. Jacobs will be here, your
19 Honor.

20 THE COURT: You are sure of that?

21 MR. LAIFER: I hope so. He will be here.

22 THE COURT: I don't want a "hope." I want
23 someone here.

24 MR. LAIFER: Yes, he will. There is no
25 question about it.

1 jgmch 38

2 THE COURT: If it's a question of jury sitting,
3 get somebody else from your firm to sit with the jury
4 while he comes here. I will send him back when the
5 jury comes in.

6 MR. LAIFER: Thank you very much. It was
7 a pleasure seeing you again, Judge.

8 THE COURT: Have a nice trip.

9 MR. DUHAMEL: That was my application. I
10 wanted to get the waiver on the record from the defendant.

11 THE COURT: He has already said on the record
12 that he agrees to let Mr. Laifer go.

13 Does the defendant know where you are going?

14 MR. LAIFER: Yes, he does.

15 THE COURT: All right. Have a nice trip.

16 MR. LAIFER: Thank you very much, Judge.

17 (Adjournment taken to Thursday, April 7,
18 1977 at 10:00 a.m.)
19
20
21
22
23
24
25

1 jglm

2 UNITED STATES OF AMERICA

3 vs.

S 76 Cr. 1141
(GLG)

4 ALLAN SONNENSCHN

5 April 7, 1977
6 10 a.m.

7 (Trial resumed in the robing room.)

8 MR. JACOBS: Judge, of course there is no need
9 to recount on the record the history of this case and
10 the more recent history with Mr. Laifer coming in and
11 selecting a jury and then even cross-examining the witness
12 Triffleman and my coming in now at this point.

13 I have not gotten the minutes of this proceeding
14 and as a condition to receiving the minutes it appears
15 that Mr. Sonnenschein will have to pay a balance on the
16 prior minutes of \$216 and approximately another \$200 for
17 these most recent minutes. I have apprised Mr. Sonnen-
18 schein of that this morning and he feels that is a problem, nu-
19 ber one. And in addition thereto Mr. Sonnenschein has
20 voiced to me some disappointment or disapproval of the
21 arrangements we are working under now; that is, with, in
22 effect, substituted counsel.

23 THE COURT: Mr. Sonnenschein, in open court yesterday
24 gave his approval of it.

25 MR. JACOBS: I understand that, your Honor. I

1 jglm
2 only want the opportunity to have Mr. Sonnenschein, outside
3 the hearing of the jury, speak to your Honor and place on
4 the record whatever objections he may have so that your
5 Honor can in your discretion rule upon these possible
6 objections.

7 THE COURT: Will you call the airport while
8 we are doing this and tell Mr. Laifer not to take off?

9 MR. JACOBS: I have a feeling Mr. Laifer is well
10 on his way to Bermuda, if not there.

11 THE COURT: Isn't that convenient,

12 THE DEFENDANT: That is not the point.

13 Your Honor, may I speak?

14 THE COURT: Yes.

15 THE DEFENDANT: I wanted Dave Jacobs to be my
16 attorney. I had known David was going to be my attorney
17 since the mistrial, that he was going to try the case;
18 and I worked with him during the weeks up until this trial.

19 That is not the problem, your Honor. I have
20 absolutely no objection.

21 I didn't understand what was going to happen.
22 I was told, or at least I understood, that if Dave, if
23 Mr. Jacobs was unavailable, Mr. Laifer would make some
24 plea, some motion, and perhaps a jury would be picked,
25 I am not even sure about that, and that Mr. Jacobs was

going to be here.

I mean I worked with Mr. Jacobs, you know, I gave him material that he has for Ms. Triffleman's cross-examination. Mr. Laifer didn't have it yesterday. I found out this morning, besides paying the bill, that Ms. Triffleman was dismissed as a witness yesterday.

Your Honor, in all sincerity, I didn't agree to that.

THE COURT: You were here when her examination was completed and she was released?

THE DEFENDANT: It was 5 o'clock, 5:05. The holiday yesterday, I ran -- between 12 and 2, I ran back and forth to downtown Brooklyn, to Mr. Laifer's office and back here. We didn't eat. In all honesty, your Honor, I truly did not believe this was happening.

Then I found out I have to pay for the minutes. Well, it is like an agreement was made between the Government and the attorneys, you know. I don't see that it was for my benefit anyway. I'm stuck with the bill. I have been paying money. You can check my account. The Government has already. I don't have that kind of money.

THE COURT: I would suggest to you, Mr. Jacobs, that you ought to advance the money for the transcripts now to get them.

MR. DUHAMEL: May I add one thing for the record?

Mr. Sonnenschein made a reference to an agreement between the Government and his attorneys and there has been no agreement. We, in fact, opposed the substitution, so that the record be clear.

THE DEFENDANT: I didn't mean that. I mean, in the sense of the date that the trial was to begin and in the event Mr. Jacobs was tied up and that he would receive the minutes of yesterday's proceedings. That's the agreement I meant.

MR. DUHAMEL: Once again, there was no agreement to that. That was between the Court and Mr. Laifer as to what arrangement would be made.

THE COURT: For purposes of clarification of the record for appellate purposes, let us review the entire bidding.

Over a month ago, at the end of the prior trial we fixed a trial date in this matter to start Monday. I told Mr. Laifer, who had tried the previous case, that he would have several days in which to advise me if there was any problem in starting on the agreed date and if I hadn't heard from him within several days that would be a firm date. I did not hear from him and it was a firm date.

1 jglm
2 On Friday of last week a judge of the New York
3 Civil Court sitting in Supreme, trying a criminal case
4 in Brooklyn, called my chambers and left a message to the
5 effect that Mr. Jacobs was on trial before him and would
6 not finish until sometime Monday and therefore might be
7 late coming here to start the trial on Monday. That was
8 the first indication that I had that Mr. Laifer was not
9 going to retry the case and that Mr. Jacobs was.

10 On Monday we were advised that the case would
11 not complete on Monday and indeed wasn't even proceeding
12 on Monday. This upset me quite a bit and I directed that
13 Mr. Laifer appear in court immediately.

14 He came to court with Mr. Jacobs and recounted
15 the following set of facts: That he, Mr. Laifer, intended
16 to leave on vacation on Thursday; that Mr. Jacobs was
17 taking his place; that the State trial had not moved as
18 expeditiously as planned, and that upon the request of
19 some jurors it hadn't even gone forward on Monday, it
20 being the second day of Passover.

21 Mr. Laifer requested an adjournment until Wed-
22 nesday to start the trial. I indicated to Mr. Laifer that
23 I was not at all convinced that Mr. Jacobs would be ready
24 to start trial on Wednesday.

25 Mr. Laifer then suggested postponing the trial

jglm

1 until Mr. Jacobs was ready. I explained to Mr. Laifer
2 that the Court, the clerk, the jury, the reporter and
3 everybody else connected with the trial had wasted all of
4 Monday because of the inefficiencies in the New York
5 State trial system and the decision of Mr. Laifer to go
6 on vacation and have Mr. Jacobs take his place, that we
7 certainly weren't going to sit around all week waiting
8 for the State trial to end and backing up other cases.

9 I did agree to wait until Wednesday at the
10 outside, but told Mr. Laifer that someone would have to
11 be in court from his firm to commence the trial on Wednesday
12 morning.

13 When he discussed the possibility that Mr.
14 Jacobs would be finishing on Wednesday morning, I told
15 him that they could make any arrangements they wanted to
16 in terms of having somebody fill in for him until he got
17 there or they could have Mr. Laifer stay and try the case,
18 which would be very easy to do since he had already tried
19 it once.

20 Yesterday Mr. Laifer appeared and announced
21 that Mr. Jacobs was still tied up and indeed the case
22 had not gone along as far as it was supposed to, but he
23 assured me Mr. Jacobs would be ready sometime during the
24 day, because he would have completed his summation and the
25

2 charge would begin.

3 I pointed out to him that Mr. Jacobs might have
4 to wait for the jury to return. I suggested to Mr. Laifer
5 that he go over to the court and take Mr. Jacobs' place
6 in the Brooklyn court and have Mr. Jacobs come over yester-
7 day to conduct the cross-examination of Ms. Triffleman.
8 Mr. Laifer declined that suggestion and instead went
9 ahead and conducted the cross-examination of Ms. Triffleman.

10 He did order the minutes of yesterday's proceed-
11 ings on a daily basis so that they could be available to
12 Mr. Jacobs this morning for review. No commitment was
13 made by anybody as to who would pay for the minutes,
14 although obviously the responsibility is either the
15 defendant's or defendant's counsel.

16 And that's where we stand right now.

17 Have I accurately recited the prior history,
18 at least to the extent known to you, Mr. Jacobs?

19 MR. JACOBS: Yes, your Honor.

20 THE DEFENDANT: Your Honor.

21 THE COURT: Yes.

22 THE DEFENDANT: It has been my understanding
23 since the date that the jury was considered hung that
24 Dave Jacobs was going to represent me, and I have proceeded
25 since the course of that time on various days with him,

1 jglm

2 giving him documents. I did not expect Mr. Laifer to
3 proceed any further yesterday than to stand in for him,
4 and that there was going to be a superseding indictment,
5 the more technical aspects. I mean I just understood
6 Mr. Jacobs to be my attorney for this trial.

7 THE COURT: When did Mr. Laifer first decide
8 that you would try this case, Mr. Jacobs?

9 MR. JACOBS: I was advised one to two weeks
10 prior to April 4th, the trial date set, by Mr. Laifer
11 that I would probably wind up trying this case. As events
12 occurred, I began a trial in the State Supreme Court in
13 Brooklyn because I was directed to, I was ordered to by
14 Justice Greenspun on the Monday preceding April 4th, and
15 I advised that court on a daily basis that we would have
16 to expedite that trial so I could be available to try
17 the case before your Honor..

18 Towards the end of that week, when it appeared
19 to me I would not be available April 4th, I advised Mr.
20 Laifer of that fact and he advised me that he was going
21 on vacation to Bermuda, this Thursday, and that the
22 problem was mine and that I would be trying this case.

23 It wasn't until last night, after court concluded,
24 that I learned, quite to my amazement and surprise, that
25 Mr. Laifer had proceeded to the point where he actually

1 jglm
2 cross-examined a major Government witness, had opened to
3 the jury and made promises, I'm told, to the jury as to
4 what he was going to affirmatively prove, and I at this
5 point, this morning, don't know one scintilla of what Mr.
6 Laifer said in his opening, what Ms. Triffleman said under
7 direct or under cross-examination, and I feel now, as I
8 have never felt in seven years of criminal-trial practice,
9 totally at a loss and totally unprepared.

10 THE COURT: Let me tell you that if Mr. Laifer
11 had been assigned counsel rather than retained counsel,
12 I would not have allowed him to leave yesterday because
13 I was apprehensive of remarks such as are being made this
14 morning.

15 However, Mr. Laifer was retained, actually the
16 firm was retained --

17 MR. JACOBS: That's right.

18 THE COURT: -- and I think you had appeared on
19 this case at one of the preliminary appearances yourself.
20 So the firm was retained and so long as the client did not
21 object, the alternation of attorneys from the same firm
22 was within his discretion.

23 Consequently, before I let Mr. Laifer go yester-
24 day, I got Mr. Sonnenschein's statement on the record
25 that he did not object to Mr. Laifer leaving.

1 jglm
2 Now, I appreciate the problem you may be in
3 personally, and consequently I strongly suggest to you,
4 because there could be repercussions against your firm,
5 that you pay for the transcripts and get those transcripts
6 this morning and read them before we commence.

7 THE DEFENDANT: That is not the major issue.
8 I just take exception to it because I was agitated when
9 I came in and I was told I got another bill. I mean I'll
10 pay. I will not stick Mr. Jacobs with the bill.

11 But I said to you yesterday, your Honor, taking
12 Mr. Jacobs as an attorney, I gladly accept Mr. Jacobs
13 as an attorney. That is not the issue.

14 I came in today and I realized, I learned that
15 Ms. Triffleman was dismissed.

16 THE COURT: If that is the major source of the
17 problem, let me suggest that I will allow the defendant
18 to recall Ms. Triffleman and treat her as a hostile wit-
19 ness for additional cross-examination.

20 MR. JACOBS: That may be one solution, Judge,
21 but I don't find that really to be very appealing to me
22 as a defense counsel. My calling Ms. Triffleman doesn't
23 really sit well with me.

24 THE COURT: If you want, I'll have the Court
25 put her back on the stand to allow you to cross-examine

1 her.

2
3 MR. JACOBS: I can't even make that judgment
4 this morning. I don't know what she said yesterday, Judge.

5 THE COURT: I suggest you get the minutes and
6 read them. What do you want to do?

7 MR. JACOBS: What do I want to do personally
8 or what do I want to do within the realm of what is
9 possible?

10 THE COURT: What do you want to do within the
11 realm of what is possible and within the realm of the
12 commitments your firm has undertaken?

13 MR. JACOBS: Proceed and do the best I can.

14 THE COURT: You don't wish to get the minutes
15 at this time and read them?

16 MR. JACOBS: The minutes aren't available,
17 as far as I know, your Honor.

18 THE COURT: If they are going to be paid for,
19 they can be made available very shortly. It is going
20 to take you half-an-hour to an hour to read them. If
21 you get what is available now and read them and then get
22 what else is available, we can start in about an hour or
23 so.

24 MR. JACOBS: That is certainly better than
25 starting now, I must say.

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THE COURT: All right.

MR. JACOBS: My preference is not to start at all, really.

THE COURT: Well, that is not going to occur.

MR. JACOBS: I might say for the record, I think the Court has been very understanding of my position. I may find that the Court's response to be inadequate in my own opinion as to what the problem is, but I do want the Court to appreciate that I thank you for at least having us in chambers here so I could express to you what the problem is. It is an overwhelming problem and it is one that I think will gravely affect Mr. Sonnenschein.

THE COURT: I think the error made was in undertaking that trial in New York State Court only a week before this one was scheduled to start. I don't know whether you were retained or assigned over there, but I think that if Mr. Laifer was adamant about having you try this case, as apparently he was, although I can't understand why, because he could have completed this case by yesterday if he started it on Monday; but in any event, if your firm had made the determination that you were to try this case, someone else from your firm should have tried the State Court case because, as you have found out, you cannot rely upon State Court cases to complete anywhere

1 near the time they say they are going to complete.

2 MR. JACOBS: Judge, to answer that question,
3 that case in the State Court was one wherein the firm of
4 Schulman & Laifer were retained, and I was directed by
5 Mr. Schulman to enter that court on Monday and do whatever
6 I had to do.
7

8 When I entered that court on Monday, I was ensnared
9 by the orders of Judge Greenspun and it was under pain
10 of contempt that I proceeded.

11 I did all I think I could have done to explain
12 to Justice Greenspun my predicament, and I wasn't going
13 to be held in contempt by him for any client.

14 THE COURT: Let me suggest that the firm of
15 Schulman and Laifer is exposing itself to certain un-
16 pleasant consequences by proceeding in the manner in
17 which it has in juggling these two trials around. But
18 that is not an appropriate subject for discussion at
19 this time.

20 MR. JACOBS: No, your Honor.

21 THE COURT: Do you want to go up and get the
22 minutes?

23 MR. JACOBS: Yes, certainly.

24 THE COURT: All right.

25 Send the jury out for coffee and tell them to

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2 come back within an hour.

3 THE DEFENDANT: I don't have a check with me.
4 Can you vouch for me and I'll bring one in tomorrow,
5 your Honor?

6 (Recess.)

7 MR. DUHAMEL: May I note a separate thing for
8 the record? Hopefully by the time we leave the robing
9 room at this time there will be certain photographs made
10 available to me, which I will immediately turn over to Mr.
11 Jacobs, which were used for identification purposes pre-
12 trial by some of the prospective witnesses of the Government,
13 and I'll give them to Mr. Jacobs.

14 THE COURT: These are pharmacy people?

15 MR. DUHAMEL: That's correct, your Honor.

16 THE COURT: All right.

17 (Recess.)
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AFTERNOON SESSION

1:30 p.m.

(Jury not present.)

THE COURT: I have the jury clerk and the attorneys on the next two cases behind you, one of whom has spent a lot of time, almost already completely wiped out calling, asking when this case will be over.

Can you give me any estimates?

MR. DUHAMEL: If we proceed at a normal schedule, your Honor, the Government has approximately ten more witnesses to present. I'd say five of those witnesses should last, with direct and reasonable cross, approximately 15 to 20 minutes. Another witness should last approximately 15 to 20 minutes; and one more witness, that makes seven. There are two more witnesses that should last approximately a half-hour to 45 minutes each and another witness who should last approximately an hour-and-a-half to two hours.

THE COURT: I make that to be at least a day to complete your case and maybe a bit more.

MR. DUHAMEL: That's what I anticipated, your Honor.

THE COURT: All right.

Mr. Jacobs, I will have to introduce you to the jury.

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2 MR. JACOBS: I wish you would, Judge.

3 THE COURT: And I'll have to make some sort of
4 apology or explanation to them as to the delay.

5 How, if at all, do you want it phrased?

6 MR. JACOBS: I don't know why any delay has to
7 be attributed to any participant in this trial. Why can't
8 the Court tell the jury that some unforeseen business took
9 the Court's time and that we are all sorry about it? But
10 that would really be lying.

11 THE COURT: Yes, it would be.

12 I'm willing to state it in such a way that it
13 doesn't cast an aspersion on anyone, but I'm not going
14 to outright lie.

15 Why don't I just say that unavoidable circum-
16 stances prevented us going ahead this morning?

17 MR. JACOBS: That's fine, Judge.

18 THE COURT: All right.

19 Bring the jury in.

20 (Jury present.)

21 THE COURT: Good afternoon, ladies and gentlemen.
22 I'm sorry to have kept you around waiting this morning.
23 We had an unavoidable situation that just prevented us from
24 going ahead and we were all here this morning, as I think
25 you know, but we couldn't proceed, and the problem is now

1 jglm

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2 solved and we are prepared to proceed.

3 Mr. Jacobs of Mr. Laifer's firm has replaced
4 him and he will be continuing to represent the defendant
5 throughout the remainder of this trial.

6 MR. LAIFER: Thank you, your Honor.

7 Good afternoon.

8 THE COURT: All right. Call your next witness.

9 MR. DUHAMEL: The Government calls Morton Alperin.

10 M O R T O N A L P E R I N, called as a witness by the
11 Government, being first duly sworn, testified as
12 follows:

13 DIRECT EXAMINATION

14 BY MR. DUHAMEL:

15 Q Mr. Alperin, what do you do for a living?

16 A I'm employed in a drug store.

17 Q In what capacity, sir?

18 A Assistant manager.

19 Q And what drug store is that?

20 A Winfield Drug Store.

21 Q Where is that located?

22 A 1407 Broadway.

23 Q Is that in the area of 38th, 39th Street? Is that
24 correct?

25 A That's correct.

jglm

Alperin-direct

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Q Are there registered pharmacists employed there?

A Yes.

Q Are you a registered pharmacist?

A No.

Q Are there prescription drugs that are dispensed at your pharmacy?

A Yes.

Q Do you recognize anybody in this courtroom as someone that you have seen in your pharmacy?

A No.

MR. DUHAMEL: Your Honor, may I approach the witness?

THE COURT: Surely.

Q I show you two documents which have been marked as Government's Exhibits 8A and 8B. Can you identify those documents?

A Yes. These were filled in the store I'm employed in.

Q What are they, sir?

A Well, they are prescriptions for controlled drugs.

MR. JACOBS: I object. They are not in evidence.

THE COURT: I think that much identification is proper for identification purposes.

jglm

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MR. DUHAMEL: It is simply what --

THE COURT: He said it is a prescription for controlled drugs.

Q Have you ever seen that prescription before?

A Yes.

Q And where have you seen them?

A They are on file in the store.

Q How can you identify that as being a prescription that was on file in your store?

A Well, Mr. Imprescia, who is the owner of the store, Alfred Imprescia, he has his signature on the bottom.

Q And is there any other identifying number on these prescriptions?

A It has a prescription number which is put in the upper left-hand side.

Q Am I correct that there is a BNDD number?

A Yes.

MR. JACOBS: At this time I object to any further questions regarding something not in evidence before the jury.

MR. DUHAMEL: If I may, we are trying to identify it.

THE COURT: He is attempting to identify the

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document.

Does the number on there represent your store?

THE WITNESS: Yes.

THE COURT: All right.

Are you offering the document?

MR. DUHAMEL: Yes, your Honor.

THE COURT: Show it to Mr. Jacobs.

MR. JACOBS: Judge, I have an objection to the offer of 8A -- pardon me. I have an objection to the offer of 8B. I have no objection to the offer of 8A.

THE COURT: All right. 8A will be received.

What is the objection to 8B?

MR. JACOBS: May I state it at the side bar, your Honor?

THE COURT: Surely.

(At the side bar.)

MR. JACOBS: Your Honor, it appears that there is a date on this paper that purports to be a prescription marked 8B and the date appears to be November 2nd, 1976. I note that the times mentioned in the indictment are from the 5th day of November, 1976 up until February 1st of 1977, and inasmuch as this piece of evidence is outside the scope of the pleadings, I believe it is objectionable. It states "November 2nd" here.

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MR. DUHAMEL: I would state for the record that the patient's name reflected on Exhibit 8B is Allan Sonnenschein and, furthermore, your Honor, that it is for the prescription for methaqualone for 30 tablets.

I would respectfully direct the Court's attention to the testimony of Leslie Triffleman where she stated that Mr. Sonnenschein had been engaged in obtaining the drug methaqualone by this series with prescriptions prior to the date that they actually agreed to and became engaged in a conspiracy. I am noting once again that the prescription exhibit in issue was prescribed by Dr. Gilbert Miller. We offer this as a prior similar act of the defendant and as corroborative of the defendant Leslie Triffleman's testimony.

THE COURT: Well, as I recall it, in his cross-examination yesterday Mr. Laifer cross-examined Ms. Triffleman about whether the defendant had ever used methaqualone prior to November 5th, or some early time in November, and she said yes. And he attempted to impeach this. So I suppose he has opened the door to it.

MR. DUHAMEL: If I may remind the Court that Mr. Laifer in fact went back to establish that as early as December of 1975, this series of conduct by the defendant

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1 Sonnenschein existed. The Court took testimony of Ms.
2 Triffleman.
3

4 THE COURT: Yes. It was a most ill-guided line
5 of cross-examination, but he kept pursuing it and he
6 finally pursued it all the way back to a couple of years
7 ago.

8 MR. JACOBS: I recall that as I read the minutes.

9 Judge, I might say that this is what I believe
10 is the first of many times I am going to have to have a
11 side bar and refer to things, or make objections on grounds
12 wherein the Court will rule against me, I suppose, because
13 Mr. Laifer has previously opened the door to that line of
14 inquiry. And I think it will become more apparent as we
15 progress that it is an unsatisfactory relationship at
16 best my coming in at this stage and attempting to salvage
17 something that Mr. Laifer has already begun but abandoned
18 in midstream.

19 It is not the Court's problem certainly, but
20 I only ask the Court, in the interests of justice, to
21 protect the rights of the defendant, to grant us some
22 type of continuance until Mr. Laifer returns.

23 THE COURT: Continuance nothing. The defendant
24 is quite clear that he wants you trying the case. I
25 think Laifer abandoned his client to go off on a vacation,

1 jglm Alperin-direct 194
2 but the client was in favor of that. Then with the continua
3 you are still stuck with what Laifer has done to date.

4 MR. JACOBS: I might say on that latest ground,
5 during the lunch hour Mr. Sonnenschein requested permission
6 to speak to you alone.

7 THE COURT: I know.

8 MR. JACOBS: He advised me that he was advised
9 by your Honor's secretary that that could not be done unless
10 there was previous permission given by Mr. Duhamel and
11 myself to that arrangement.

12 I don't know what the defendant wants to speak
13 to your Honor about. I have difficulty in relating to the
14 defendant. He is like a loose horse, to use the phrase,
15 and I have no objection to him speaking to your Honor.

16 I think that he is going to object at this point
17 to my continuing as his counsel on the grounds that I am
18 ill-prepared or not adequately apprised of what preceded
19 my entry into this case this morning. I suspect that is
20 his motive and I think it is going to be more apparent as
21 we progress that he may have well been right, that it is
22 inuring to his ill benefit, or it is damaging to him
23 beyond any repair to have to continue with an attorney
24 unaware of a lot of things that happened in the case prior
25 to his entry into it.

jglm

Alperin-direct

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THE COURT: Well, are you a partner in the firm?

MR. JACOBS: Not at all, your Honor. I am very loosely associated with that firm.

THE COURT: If this were a simple case, I would be very apprehensive that it was going to result in a malpractice suit against the firm. Maybe it can still result in a malpractice suit. I know it will very likely result in a habeas corpus or, more accurately, a 2255 being pursued on the basis of inadequate representation.

However, that is an extremely difficult case to make out when you've got retained counsel, which is what we have here.

I appreciate the problem you are in. I think the partners of your firm should appreciate the problem they are creating. But I can't do anything about it.

I will overrule the objection.

MR. JACOBS: Thank you.

(In open court.)

MR. DUHAMEL: Your Honor, the Government renews its offer of Exhibit 8B.

THE COURT: 8B received.

(Government's Exhibits 8A and 8B for identification received in evidence.)

MR. DUHAMEL: Your Honor, at this point, with

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1 the Court's permission, I wish to read certain portions
2 of these two exhibits to the jurors and then give them to
3 the jurors so that they might have an opportunity to
4 examine them themselves.
5

6 THE COURT: All right.

7 MR. JACOBS: Your Honor, as to that procedure,
8 may I be heard?

9 THE COURT: Yes.

10 MR. JACOBS: It appears that the documents are
11 now in evidence and they will be distributed to the jury.

12 THE COURT: Yes.

13 MR. JACOBS: It seems to be **duplicitous** for Mr.
14 Duhamel to read to the jury something they will see for
15 themselves.

16 THE COURT: I assume he is going to read only
17 a limited part and he is doing it for purposes of directing
18 their attention to a particular part and that it will
19 not unduly take up the Court's time.

20 Am I correct in that regard?

21 MR. DUHAMEL: Exactly.

22 I refer, first of all, to Government's Exhibit
23 8A. It is a document which, as testified to by the witness,
24 is a prescription purportedly prescribed by a Dr. Gilbert
25 Miller on December 7, 1976. The name of the patient is

* * *

jglm

White-direct

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A I am a group supervisor.

Q And for how long a period of time have you been a group supervisor?

A About five years.

Q In a general fashion, what are your responsibilities as a group supervisor?

A To insure that the men in the group are roughly between 10 and 14 men, that they have the resources to accomplish their mission.

Q Directing your attention to the afternoon of December 3rd, 1976, what was your assignment on that afternoon?

A I, along with several other agents in my group, was participating on a surveillance in the vicinity of 79th Street and Second Avenue.

Q Were there any other agents involved in that? Or more specifically -- you just said "they were" -- who were they?

A Myself, Agent John DiGravio, Agent George Whalen, Agent Michael Kane, and an informant working for the Drug Enforcement Administration by the name of Carol Clifford.

Q And had you ever seen the informant prior to that date?

A Yes, sir, many times.

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White-direct

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Q Had you ever had occasion to approve requests for pay to her?

A Yes, sir, many times in the previous four months.

Q What was the basis upon which she would be paid for her services?

A She would be paid a certain amount of money, depending on the quality of the narcotic violator that she was initiating a case against.

Q And to your knowledge at that time what were you to surveil?

A I was to surveil a meeting that was to take place that afternoon on a Friday between Special Agent John DiGravio, Carol Clifford and a female known to me as "Leslie Truffleman," T-r-u-f-f-l-e-m-a-n.

Q What is the function of surveillance?

A Well, this surveillance, like many others, the primary function was that the surveilling agents who I already mentioned, that they principally protect the undercover agent, who was John DiGravio, to personally assure his safety as well as the safety of the informant.

Q Excuse me, sir. To your knowledge, was this their first meeting with that individual?

A Yes, sir, it was.

Q And are there any other objectives of the surveillance?

jglm

White-direct

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1 A Well, there would have been roughly two more
2 objectives. The second objective would be that we, the
3 agents on surveillance, that we would be able to recognize
4 whomever the informant Carol and the Agent John DiGravio,
5 whomever they met with, that we could recognize them at
6 a future date.
7

8 And the third mission of us out there on that
9 particular date, or in any other surveillance, would be
10 to see if we see any narcotic transaction between the
11 defendant and an agent or between the defendant and a
12 defendant.

13 MR. JACOBS: Judge, I would ask that the word
14 "defendant" be struck. They were not defendants at the
15 time.

16 THE COURT: All right. We'll strike the use
17 of the word "defendant" and make it perpetrator?

18 MR. JACOBS: That's fine with me.

19 MR. DUHAMEL: May I proceed, your Honor.

20 THE COURT: Yes.

21 Q As far as this identification is concerned, in
22 this particular instance was there any arrangement made
23 by the agents there to attempt to set up a future deal?

24 MR. JACOBS: I'll object to the leading nature.

25 THE COURT: Yes. Try not to lead.

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White-direct

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Q As far as the identification objective of the surveillance, did that apply to this particular situation?

A Definitely; yes, sir.

Q In what way?

A Well, it is planned on when the agent goes out to meet a subject that he will have future meetings with the subject in order to gather additional evidence against that subject.

Q How many surveillances have you taken part in since you've been with the DEA?

A It would be a guess, but it would be well over 1,000.

Q Now, in those instances, on how many occasions were drugs actually passed?

MR. JACOBS: I'll object. Irrelevant.

MR. DUHAMEL: I think it was made relevant by the opening argument, your Honor. I would like to pursue it.

THE COURT: Why don't you wait for rebuttal and see if it does get brought in, as indicated?

MR. DUHAMEL: Fine.

Q Focusing once again on December 3rd, 1976, at what point did you arrive at the location?

A I got there a few moments before 3:30 on the Friday afternoon and I parked the Government car that I

jglm

White-direct

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1 was driving north of 79th Street on Second Avenue, looking
2 down Second Avenue.
3

4 Q And did you stay in that area for a certain
5 period of time?

6 A I stayed in my vehicle until about 3:30. I saw
7 the car driven by Agent DiGravio, and containing as a
8 passenger Carol Clifford, pass by my location, and I saw
9 Agent DiGravio park his car just south of 79th Street on
10 the east side of Second Avenue.

11 Q Did you observe Agent DiGravio and Carol Clifford
12 exit the vehicle?

13 A Yes, sir. I saw both of them get out of the
14 Government car and then I saw Agent DiGravio and Carol
15 cross Second Avenue and enter the Burg-a-Cue Restaurant at
16 79th and Second Avenue.

17 Q At some point thereafter did you, yourself,
18 enter the Burg-a-Cue?

19 A Yes, sir. I first directed Agent George Whalen
20 to enter the Burg-a-Cue Restaurant, and then several
21 minutes after he entered I went into the restaurant. I
22 believe I went in there about 5, no more than 10 minutes
23 after Agent DiGravio had entered the restaurant.

24 Q Now, once you arrived inside, did you see Agent
25 DiGravio?

jglm

White-direct

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1 jglm
2 A Yes, sir, I did.

3 Q And was he just with Miss Clifford at that time?

4 A No, sir. Agent DiGravio, Miss Clifford, Leslie
5 Truffleman and this gentleman Allan were in the restaurant,
6 in a booth.

7 Q At that time, did you know that Allan was going
8 to be there?

9 A No, sir, I did not.

10 Q Did you even know of Allan at that time?

11 A At that time, no, I did not.

12 Q Did you expect to see Allan there at that time?

13 A No, I did not.

14 Q What happened after you entered the Burg-a-Cue?

15 A When I walked into the restaurant, I was trying
16 to get a position where I could insure, again, the safety
17 of Agent DiGravio and observe the subjects at the table.
18 I saw there were many customers inside the restaurant.

19 I walked past Agent DiGravio's table and thought
20 the best place for me to sit to perform what I was supposed
21 to do was at the counter in the restaurant, and I took a
22 seat at the counter about 15 feet from where Agent DiGravio
23 was sitting.

24 MR. DUHAMEL: With the Court's permission, may
25 the witness be allowed to step off the witness stand and

jglm

White-direct

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1 demonstrate to the jury where he was in relation to the
2 subjects.
3

4 THE COURT: All right. Do you want him to draw
5 a diagram on the blackboard or just --

6 MR. DUHAMEL: It may be just as easy to step
7 down, your Honor, and do it.

8 THE COURT: All right. Go ahead.

9 (The witness left the witness stand.)

10 THE WITNESS: I would have been seated at a
11 counter. This would be the counter. This would be the
12 stool or the bench that I was sitting on. And Agent
13 DiGravio and the other three people would have been
14 approximately where Mr. Duhamel is now.

15 For me to look at them, I would have to turn
16 around and glance over at them periodically.

17 MR. DUHAMEL: May we take one moment, your
18 Honor?

19 (Pause.)

20 THE COURT: If he has finished his demonstra-
21 tion, he can return to the witness box.

22 MR. DUHAMEL: Fine, your Honor.

23 Q Agent White, from where you were located at that
24 time, would you just describe -- were you able to overhear
25 any conversations between Agent DiGravio and any of the

1 jglm

White-direct

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2 other subjects?

3 A No, sir. I heard no conversation.

4 Q Could you explain to the jury the extent of
5 your observations of the individuals on that occasion?6 A Well, a moment or two after I arrived at the
7 counter, Miss Clifford got up from the booth that she was
8 in and she left. I saw her come back several minutes
9 later.10 Q Excuse me, Agent. To your knowledge, did she
11 leave the premises or just leave the table and stay within
12 the premises?13 A It would be my feeling she stayed within the
14 premises. She left her coat on the rack and she just
15 walked out of my view.

16 Q Thank you. Would you please continue?

17 A Again I stayed at the counter and occasionally,
18 every several minutes, I would just glance over my right
19 shoulder at the subjects at the booth.20 Miss Clifford came back, sat down again at the
21 booth. I stayed at the counter for about another ten
22 minutes, at which time I got up from the counter and I
23 left the restaurant.24 Q For approximately how long a period of time were
25 you in the restaurant on that occasion?

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White-direct

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2 A No more than ten minutes, sir.

3 Q And during that time, what was the total amount
4 of time that you spent in observing Agent DiGravio and
5 the subjects?

6 A The maximum would be no more than 20, tops 30
7 seconds.

8 Q And during the 20 to 30 seconds of observation,
9 that would have been while you were looking over your
10 right-hand shoulder?

11 A Yes, sir.

12 Q During the time you were in there, did you see
13 anything pass between any of the individuals seated at
14 that table?

15 A No, sir. I saw nothing pass between the
16 individuals.

17 Q When you left the Burg-a-Cue, what did you do
18 at that point?

19 A When I came out of the Burg-a-Cue, I went directly
20 to the Government car which I had parked on Second Avenue
21 and I maintained a visual observation of the entrance into
22 the Burg-a-Cue Restaurant.

23 Q Did you have occasion to see any of the subjects
24 at that point?

25 A No, sir, I did not.

jglm

White-direct

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Q At some point thereafter did you have occasion to see any of the subjects?

A Yes, sir. About five minutes later, I saw Agent DiGravio and Miss Clifford Come out of the Burg-a-Cue Restaurant and they both walked south on Second Avenue. I then directed an agent to follow Agent DiGravio and Miss Clifford and I maintained an observation of the front of the restaurant.

Q At some point thereafter did you see any of the other subjects leave the Burg-a-Cue?

A Yes, sir. About one hour later, I saw the two subjects, Ms. Truffleman and Allan, and a female, a Jane Doe, came out of the restaurant. They came out about 5:00 p.m.

Q Excuse me. When you say "Jane Doe," does that mean you did not know her identity?

A No, sir, I did not know her identity.

Q Had you ever seen her before?

A No, sir, I had not.

Q All right. Please continue.

A I saw the three come out of the restaurant. I saw them pause at 79th Street and Second Avenue in the street and I saw this gentleman get into a taxicab. I saw the taxicab go south on Second Avenue.

I continued watching Ms. Truffleman and this

jglm

White-direct/cross

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1 Jane Doe, and I saw them walk north on Second Avenue until
2 about 80th, 81st Street, and I observed both the women
3 enter a furniture store on Second Avenue. They stayed in the
4 furniture store for about ten or fifteen minutes and then I
5 saw them come out of the furniture store.
6

7 Q And did you continue to observe them?

8 A Yes, sir. I saw the both of them get into a
9 taxicab and I followed them to 32nd between Fifth Avenue
10 and Madison Avenue. I saw the both females get out of
11 the taxicab and enter another furniture store on 32nd Street,
12 and I stayed watching this furniture store until about a
13 quarter to six, ten to six that night. And at that time I
14 made the determination to discontinue the surveillance and
15 I told the other agents that we would stop the surveillance
16 and we returned to the bureau office.

17 MR. DUHAMEL: No further questions, your Honor.

18 With the Court's permission, I would like to
19 hand to the jury Government's Exhibit 9A.

20 Cross-examination. You may cross-examine.

21 CROSS-EXAMINATION

22 BY MR. JACOBS:

23 Q Agent White, we've never met before, have we?

24 A No, sir, we have not.
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Q Agent White, as you testify here today, did you testify about the events of December 3rd, 1976 solely from your memory or recollection?

A And from the Government memorandum which was written shortly after the surveillance.

Q Were these memoranda written by yourself?

A No, sir, it was not.

Q Is it your testimony then, Agent White, that your testimony today to events of December 3rd, 1976 is at least in part from memoranda written by others?

A Well, it would be my independent recollection as well as a memorandum which was similar or the same as my recollection when it was prepared.

Q Sir, did you yourself complete any memoranda concerning your observations of December 3rd?

A No, I did not.

Q John DiGravio was a Drug Enforcement agent within your group during the period of time we are discussing, was he not?

A Yes, sir, he was.

Q For how long a period of time did you supervise Agent DiGravio?

A I could obtain the exact date of when he came in the group. But I think he came into my group about two

jglm

White-cross

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1 or three months prior to December, and he is still a
2 member of my group.
3

4 Q Prior to that, do you know where he was assigned?

5 A Yes, sir, I do.

6 Q Where was that?

7 A He was assigned to the Long Island district
8 office, which is part of the New York regional office.

9 Q Now, as the group supervisor, you were in charge
10 of this group of agents on December 3rd, weren't you?

11 A Yes, sir, I was.

12 Q In the Drug Enforcement Agency of the United
13 States Government are there any types of photographic
14 equipment, still cameras or movie cameras, which are pro-
15 vided to your agency for surveillance work?

16 A Yes, sir, there are.

17 Q And does that include movie picture cameras
18 and still cameras?

19 A Yes, it does.

20 Q Does that include a collection of lenses for
21 long-distance observation?

22 MR. DUHAMEL: Objection. Irrelevant.

23 MR. JACOBS: I think I will connect it.

24 THE COURT: All right. Continue.

25 Q Does it include lenses used for long-range

jglm

White-cross

225

1 focusing?

2 A Yes, sir, it does.

3 Q Does that include binoculars?

4 A Yes, sir, it does.

5 Q Prior to your arrival at the Burg-a-Cue Restaurant
6 on the date in question, were you equipped with any of
7 the types of materials I mentioned?
8

9 A The only equipment that we had on the street at
10 that time was binoculars.

11 Q Did you use binoculars at any time on December
12 3rd?

13 A No, sir, I didn't.

14 Q Who was provided with binoculars, if you know?

15 A I can testify that I had them in my Government
16 car. I don't know about the other Government car driven
17 by Agent Kane.

18 Q Do you know whether Agent Kane had any type of
19 photographic equipment with him?

20 A No, sir, he did not.

21 Q That was available to the Drug Enforcement
22 Agency on the date in question, was it not?

23 A Yes, it was.

24 Q And prior to getting to the Burg-a-Cue Restaurant,
25 you knew that you were going there for a supposed drug

jglm

White-cross

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meeting, did you not?

A Yes, sir, I did.

Q Now, is the Drug Enforcement Agency provided with any type of equipment for recording sounds and voices, tape recorders and the like?

A Yes, sir. We have two principal types. One is a Kel tape recorder and the other is a Nagra.

Q Could you distinguish those two for the purposes of the jury's understanding?

A Yes, sir. A Kel device is a transmitter. It is a bulky belt that an agent can wear underneath his clothing. When he puts on this device, he runs a wire up on his chest and it stops roughly about four inches from his throat, where it is taped.

Once the agent has this device on, when it is activated, you are supposed to be able to hear within one or two blocks parts of conversations that the agent would be having.

Q Did you, sir, have this type of recording device on your person on the day in question?

A No, sir, I did not.

Q Did Agent DiGravio, if you know?

A No, sir, he did not.

Q Did any of the other agents within your group on

jglm

White-cross

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that date have that type of device?

A The only agent that would be permitted by the Department of Justice regulations to wear it on that date would be Agent DiGravio.

Q And he didn't have that device?

A No, he did not.

Q What is the other device you referred to?

A We have another device, called a Nagra, and it is like this orange book that is on the desk. It is a bit smaller than that but maybe three-quarters-of-an-inch thick. It is a device that an agent can put on and it is a self-contained device. People that are on surveillance you cannot hear any parts of the conversation. It is recorded within the device, within the Nagra itself, and then it is put on a tape recorder at a later date and played back.

Q Did Agent DiGravio have that type of recorder on him on the date in question?

A On December 3rd? No, sir.

Q To your knowledge, did Agent DiGravio, prior to arriving at the restaurant, expect to meet Leslie Triffleman and engage hopefully in a drug transaction with her?

A Yes, sir, he definitely did.

Q As group supervisor, do you have access to the

1 information in the Drug Enforcement Agency concerning
2 known drug dealers?

3 A I don't understand the question, sir.

4 Q Let me put it this way: Prior to December 3rd,
5 1976 had you ever heard the name Allan Sonnenschein?

6 A No, sir, I had not.

7 Q On December 3rd, 1976, after this meeting in
8 the restaurant, on that date, December 3rd, did you still
9 not know the name Allan Sonnenschein?

10 A I think the only name I knew after the meeting
11 on December 3rd was the name Allan.

12 Q Now, with reference to this meeting, where is
13 this restaurant located?

14 A It is located specifically on the northwest
15 corner of 79 Street and Second Avenue.

16 Q And what time did you arrive there?

17 A I got there several moments before Agent DiGravio.
18 I would say 3:20, about 3:20 that Friday afternoon.

19 Q Did you see Leslie Triffleman arrive there?

20 A No, sir, I didn't.

21 Q Did you see Allan Sonnenschein arrive there?

22 A No, sir, I didn't.

23 Q And you proceeded into the restaurant, didn't
24 you?

1 jglm

2 A No, sir. I waited until Agent DiGravio and
3 Miss Clifford entered the restaurant. Then I directed
4 another agent to go into the restaurant. And several
5 minutes after that I then went in.

6 Q When you went into the restaurant, did you see
7 Agent DiGravio there?

8 A Yes, sir, I did.

9 Q Who was he with?

10 A He was with three other people: Miss Clifford,
11 Leslie Truffleman and this gentleman.

12 Q Indicating the defendant, right?

13 A Yes, sir.

14 Q And where were they?

15 A They were seated at a booth. When you walk
16 in down the center aisle, the booth would have been on
17 the left-hand side, the first booth on the left.

18 Q And do you recall the seating arrangement in that
19 booth?

20 A No, sir, I do not.

21 Q Do you recall if Agent DiGravio was seated on
22 the inside of the booth near the wall or the outside of
23 the booth near the aisle?

24 A I don't recall, sir.

25 Q Do you recall if Agent DiGravio was seated next

jglm

White-cross

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1 to a male or a female?

2 A I don't recall, sir.

3 Q Agent White, is it not a fact that one of the
4 functions or one of the expectations you had when you
5 were in that restaurant on that date was to observe a
6 drug transaction? That was your expectation?
7

8 A No, sir, it was not.

9 Q Did you have prior knowledge that there was a
10 meeting planned for a drug transaction?

11 A I was told that there would be a purchase of
12 evidence made by Agent DiGravio from this female Ms.
13 Truffleman. Based on my previous experience on surveillance
14 I had very minute -- I knew that I would not
15 see a drug transaction between the two of them.

16 Q Have you ever been on surveillance in other
17 cases when you did see drug transactions?

18 A In the more than thousand surveillances I've
19 been on, I've only seen a drug transaction that I've
20 observed less than a dozen times.

21 Q Agent White, --

22 THE COURT: That answer is not clear to me.
23 Are you saying that there were a thousand occasions in
24 which drugs exchanged hands but you only observed it occur
25 a dozen times or that on only a dozen occasions did drugs

jglm

White-cross

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actually change hands?

THE WITNESS: Out of the thousand times on surveillance or more, 60 or 70 percent of the time drugs were exchanged, and out of that I only saw a transaction which I knew to be a transaction about a dozen times.

THE COURT: All right.

Q Agent White, in relation to this booth where these individuals were seated, where did you place yourself?

A I walked past them and then I went to a counter, and the counter -- again, as I was seated in the chair here, the table would have been the counter, and I would have been facing in this direction and the booth was about where you are standing, sir.

Q Is it correct to say your back was to that booth?

A Well, it would have been my back and my entire right side would have been facing toward the booth.

Q And you had occasion while you were there to glance over at that booth, did you not?

A Yes, sir, I did.

Q Do you know approximately how many times you did that?

A About six times; no more than that.

Q And how close were you to that booth at that point?

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White-cross

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A Approximately 15 feet.

Q And you were at the counter then, right?

A Yes, sir.

Q Were there any seats at the counter closer than 15 feet to the booth?

A Yes, sir. But most of them, when I first walked in, they were all occupied by different customers.

Q There were none available for you to sit in, is that right?

A Well, as I walked in, I didn't observe any. I took the best seat available for my mission at that time.

Q While you were in the restaurant, did any of the seats closer to the booth open up?

A I don't recall. But I would say probably it happened, yes.

Q Did you change your position to get closer to the booth?

A Absolutely not.

Q Now, at any time when you were in that restaurant, did you see a paper bag at all?

A At the booth?

Q At the booth.

A No, I did not.

Q Did you ever see a paper bag sitting on the table

1 jglm
2 in the restaurant?

3 A In that booth? No, I didn't.

4 Q Did you ever see a transfer of what appeared to
5 be United States currency between any of the occupants of
6 the booth?

7 A No, sir, I didn't.

8 Q Did you ever see a female in that booth hand what
9 appeared to be a pill to Agent DiGravio?

10 A No, I didn't.

11 Q Did you ever see anyone hand anything to Agent
12 DiGravio in that restaurant on that date?

13 A No, sir, I did not.

14 Q Did you ever see any movement of hands or motions
15 which indicated to you in your experience that there was
16 a transfer of something?

17 A No, sir, I did not.

18 Q Were you the only Drug Enforcement agent in that
19 restaurant when Agent DiGravio was in it?

20 A No, sir. As I said before, there was one other
21 agent that went in prior to me, and he was Agent George
22 Whalen.

23 Q Where was Whalen in the restaurant when you
24 were there?

25 A He was on my right at the same counter I was at,

jglm

White-cross

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separated by several people.

Q Was he closer to this booth than you were?

A Yes, sir.

Q Approximately how many feet from that booth was Agent Whalen?

A It would be a rough approximation. About ten feet.

Q Now, approximately what time did you leave that restaurant?

A I left the restaurant about ten minutes to 4.00.

Q And you had entered just a few minutes before 3:30, is that correct?

A No, sir. First Agent DiGravio and Miss Clifford went in about 3:30, and then Agent Whalen went in. And then I went in, and I would have entered the restaurant about 3:35, the latest 3:40.

Q So then you were in that restaurant, by your own estimate, 10 to 15 minutes, is that correct?

A Closer to ten minutes.

Q And out of those ten minutes, could you approximate for how long a period of time Agent DiGravio was in your view?

A No more than 30 seconds. I would say more toward 20 seconds.

jglm

White-cross

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1 jglm
2 Q Would it be correct, if you agree with my
3 arithmetic, that less than five percent of the time you
4 were in the restaurant you spent observing DiGravio and
5 those with him?

6 A I would say it would be less than five percent.

7 Q Now, when you left the restaurant, do you know
8 if Agent Whelan was still in there?

9 A No, I don't.

10 Q So is it correct to say, Agent White, that at
11 the time when you left the restaurant you were not aware
12 of whether or not Agent DiGravio was being surveilled
13 by your brother agent?

14 A At that time, no, I was not.

15 Q Is it safe to say therefore that you were not
16 aware of whether or not Agent DiGravio was being protected
17 by another agent?

18 A I wasn't aware that he was under direct obser-
19 vation by an agent. But I knew when I was in the restaurant
20 and when I left, due to the amount of customers in there
21 I felt that Agent DiGravio was safe.

22 Q Now, are you able, from your recollection, to
23 describe the female in that booth, not Carol Clifford but
24 the other female?

25 A Yes, I can.

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White-cross

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Q How would you describe that female?

A She had light-colored hair. She was about 5-6.
I would estimate she weighed 120, 125 pounds.

Q Did you ever see her walking?

A I've seen her walking when she came out of the
restaurant. She had on a long coat and a hat.

Q Are you finished with the answer, sir?

A Yes, sir, I am.

Q Was there anything distinctive about her walk,
her style of walk?

A At the time that I watched her, no.

Q Did she appear to have any in walking, to you?

A No, she did not.

Q Did she appear to have any sort of a limp?

A There was no pronounced or definite limp that I
observed, no.

Q All right.

Now, as far as Carol Clifford is concerned, had
you ever seen Carol Clifford prior to December 3rd?

A Yes, sir, I had.

Q On how many occasions?

A Several. It would be less than ten times.

Q And she was a registered confidential informant
to your agency, was she not?

1 jglm

2 A Definitely. Yes, sir.

3 Q And she helped you on other cases other than
4 this?

5 A Yes, sir, she had.

6 Q Was she paid on all of those occasions?

7 A No, sir.

8 Q On this case, do you recall how much she was
9 paid?

10 A Offhand, no, sir.

11 Q By the way, in your agency, as supervisor, do
12 you approve payment of funds to confidential informants?

13 A Well, I would be one of the people in the chain
14 of command who would have to approve any payment to an
15 informant.

16 Q Do you have any recollection now as to whether
17 or not you ever approved any payment to Carol Clifford in
18 connection with this matter?

19 A I have no recollection of my own. But that
20 information can be retrieved from the DEA record system.

21 Q Would it refresh your recollection if I were
22 to tell you that you approved the payment of \$150 to
23 Carol Clifford to initiate this case? Would that refresh
24 your recollection in any way?

25 A No, sir.

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White-cross

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Q When did Allan Sonnenschein leave that restaurant?

A He came out of the restaurant with these two females about 5 o'clock on that Friday afternoon.

Q When Allan Sonnenschein left the restaurant that day at 5 o'clock, did you know then whether or not Agent DiGravio had purchased any controlled substances?

A It was either just before they came out -- yes, I did know. Yes, sir, I did.

Q Had you spoken to Agent DiGravio prior to 5 o'clock in that restaurant?

A I didn't speak to him in the restaurant. But when Agent DiGravio got in his Government car, he was followed by Agent Michael Kane, and either Agent Kane or Agent DiGravio told me via the two-way radio that a quantity of drugs had been purchased by Agent DiGravio.

Q Now, when Mr. Sonnenschein came out of that restaurant, where did he go?

A I only saw him for two or three minutes. He paused with the two females on the street of Second Avenue and then he entered a New York City taxi and he went south on Second Avenue.

Q Did you follow that taxi?

A No, sir. I stayed in my car with Agent Whalen

jglm

White-cross

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and I watched Leslie Truffleman and the female.

Q Did Agent Kane follow that taxi?

A No, sir. Agent Kane was with Agent DiGravio, accompanying Agent DiGravio back to the DEA office. When Agent DiGravio got back to the office, Agent Kane came back and rejoined me on surveillance and I met up with Agent Kane on surveillance when Leslie Truffleman came out of the furniture store and went down to 32nd Street.

Q Agent White, did anybody follow that taxicab?

A No, sir.

Q You referred to this female as "Truffleman." Do you know if that's her correct name?

A No, sir, I do not.

Q Have you ever heard the name Triffleman?

A I may be mispronouncing it. It is one or the other.

THE COURT: How do you spell it?

THE WITNESS: I have no idea, sir.

Q Have you ever seen that name in any DEA reports in writing?

A Yes, sir, I have.

Q But you have no recollection of how it is spelled, do you?

A No, I do not.

jglm

White-cross

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1 jglm
2 Q Was Truffleman, or Triffleman, followed by your-
3 self or any agent underneath you as she left the restaurant?

4 A Yes, sir. I did. I followed her to the furniture
5 store, Churchill Furniture Store on 81st or 82nd and
6 Second Avenue. I watched her go into this furniture store
7 with this Jane Doe. I saw them both come out after about
8 ten minutes and I saw them both get into a taxicab. I
9 followed that taxicab down to 32nd Street and I saw them
10 enter a second furniture store on 32nd Street.

11 Q Have you seen that other female since that time?

12 A No, sir, I have not.

13 Q Do you know if the identification of that other
14 female with Ms. Triffleman was ever ascertained?

15 A I didn't ascertain it. But I know that they have
16 identified her. DEA has identified her.

17 Q Do you know if she has ever been arrested?

18 A No, I do not.

19 Q Now, prior to your following Ms. Triffleman after
20 she left this restaurant, had you received information that
21 indicated to you that a drug transaction had transpired
22 at Burg-a-Cue?

23 A Yes, sir. As I said, either Agent DiGravio or
24 Agent Kane told me on the two-way radio that Agent DiGravio
25 had purchased evidence inside the restaurant.

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White-cross/redirect

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Q And after receiving this information, would it be correct to say that Leslie Triffleman was followed and Allan Sonnenschein was not followed?

A Yes, that is correct.

Q Just a few more questions, Agent White.

As far as these recording devices are concerned, the Nagras and Kels, have you personally ever worn them?

A Yes, sir, I have.

Q And do men who work for you under your command wear them?

A Yes, sir, they do.

Q Do they wear them oftentimes?

A They wear them more than 50 or 60 percent of the time that they work undercover.

Q But Agent DiGravio did not have either recording device on him on December 3rd, is that correct?

A No, he did not; no, sir.

MR. JACOBS: No further questions.

THE COURT: Redirect.

REDIRECT EXAMINATION

BY MR. DUHAMEL:

Q Do you film every deal that you surveil?

MR. JACOBS: I believe this is Agent White, not Agent Kane.

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White-redirect

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THE COURT: Yes, it is.

MR. DUHAMEL: I am confused. I'm sorry.

Q Agent White, do you film every deal that you surveil?

A No, sir, we do not.

Q What are the standards for filming drug transactions?

A The standard would be if we have the manpower at that time, if we have the vehicle, the proper vehicle to film it from, or the time to gain an observation post where we are going to take the film, and the necessity of it, do we need it at that time for further identification.

Q As group supervisor, what was your opinion as to those factors on December 3rd, 1976, on this specific transaction?

MR. JACOBS: I object to opinion evidence, your Honor.

THE COURT: Overruled.

Q Please answer.

A The main reason I didn't direct any agent to take pictures that day was the lack of manpower. There were only two other agents present on surveillance.

Q You testified that Agent DiGravio under the Department of Justice regulations was the only one on that

jglm

White-redirect

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1 afternoon who could have worn a Kel recorder, is that
2 correct?
3

4 A Yes, sir.

5 Q Are there any standards by which he would guide
6 himself in determining whether or not to wear a Kel
7 recorder?

8 A Yes, sir, there are.

9 Q What are the standards?

10 MR. JACOBS: I'll object to that, your Honor.

11 THE COURT: Overruled.

12 A The first standard is the agent's safety, does
13 he feel comfortable in wearing it. Most agents, before
14 they go out, when they are working undercover, the first
15 time meeting subjects they are very hesitant in wearing
16 any type of recording device because they can be searched;
17 and oftentimes on television, any television program in
18 the evening, you can see different actors or police officers
19 outfitting themselves with various recording devices and
20 most agents now are very hesitant about wearing these
21 devices for their own safety until they first meet the
22 subject and they can feel whether they can wear it or not.

23 Oftentimes the first occasion that an agent
24 meets a subject they are searched, and after that the subject
25 becomes more relaxed and in the future meetings they don't

jglm

White-redirect

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search the agent.

Q Is there any relationship then in this particular case between the possibility of future transactions and the decision to wear a recording device?

MR. JACOBS: I'll object to the leading nature.

THE COURT: Yes. Sustained.

Q Was there any relevancy as to the possibility of a future transaction in this instance?

MR. JACOBS: Objection.

THE COURT: Strike the word "relevancy."

Was it part of the Bureau of Narcotics' plan to set up further sales?

THE WITNESS: Yes, sir.

MR. DUHAMEL: No further questions, your Honor.

THE COURT: All right.

You are excused.

(Witness excused.)

MR. DUHAMEL: The Government calls Special Agent George Whelan.

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Whelan-direct

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GEORGE WHELAN, called as a witness by the
Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. DUHAMEL:

Q By whom are you employed?

A Drug Enforcement Administration.

Q And how long have you been employed by that agency?

A Eight-and-a-half years.

Q And what is your position with that agency?

A I'm a special agent.

Q Directing your attention to December 3rd, 1976,
on that afternoon what was your assignment?

A I was surveillance agent covering Agent John
DiGravio.

Q You said "surveillance agent"?

A Yes, sir.

Q What are your objectives in conducting a sur-
veillance?

A Primarily security of the agent and to attempt
to later identify the defendants involved in a deal.

Q On this particular day, did you have occasion
to see Agent DiGravio during the course of your surveillance?

A Yes, I did.

Q And where was that, sir?

A It was in a coffee shop on 79th Street and Second
Avenue.

Q Did you have occasion to observe him entering the

jglm

Whelan-direct

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2 coffee shop?

3 A Yes, I did.

4 Q How much earlier than his arrival did you arrive?

5 A Almost at the same time.

6 Q Approximately what time was that?

7 A About 3:30 in the afternoon.

8 Q And when he arrived, was he alone?

9 A No, he wasn't. He was with an informant.

10 Q A paid informant?

11 A I'm not sure of her status. I know she is an
12 informant.

13 Q Do you know her name?

14 A Carol.

15 Q Do you know if her last name is Clifford?

16 A I believe it is, yes.

17 Q I'm sorry. Where did you say this was, the
18 location?

19 A 79th Street and Second Avenue.

20 Q After Agent DiGravio entered the Burg-a-Cue,
21 what did you do?

22 A I remained outside for about ten minutes. Then
23 I went into the coffee shop.

24 Q Now, once you arrived inside the coffee shop,
25 did you observe Agent DiGravio?

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Whelan-direct

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A Yes, I did.

Q And with whom was he at that point?

A He was with the informant and another couple,
a man and woman.

Q That is Carol?

A That's correct, Carol.

Q And a man and woman, you said?

A Another man and woman.

Q Would you describe the woman he was with?

A She was in her late 20s, probably kind of slim,
blond hair, medium height.

Q Now, the male that was with her on that occasion,
do you see him in the courtroom today?

A Yes, I do.

Q Would you please identify him for the jury?

A This fellow here (Indicating).

MR. DUHAMEL: Your Honor, may the record reflect
that the witness has correctly identified the defendant
Allan Sonnenschein?

THE COURT: Yes.

Q How long were you inside the coffee house on
that occasion?

A Approximately ten minutes.

Q And where were you seated?

And with the Court's permission I would ask that this witness also be allowed to step down from the witness stand and demonstrate to the jury where he was seated in relation to the subjects under surveillance.

(The witness left the stand.)

MR. DUHAMEL: Indicating the Government counsel

THE WITNESS: That's correct.

THE WITNESS: Just over my left shoulder.

THE WITNESS: Almost directly behind me, just
shoulder.

A No more than ten feet.

(The witness returned to the witness chair.)

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Whelan-direct

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Q At the time you were in there, other than John DiGravio, were there any other agents inside, to your knowledge?

A At that time I didn't see any other agents, no.

THE COURT: Incidentally, those kinds of restaurants very often have mirrors behind the waiting area. Could you look in a mirror and see behind you?

THE WITNESS: I don't believe I could, or I would have spent my entire time watching the mirror rather than turning around at all.

Q Am I correct then that you did not look in the mirror and see the individuals behind you?

A No, I did not.

Q Now, during the time you were in there, what, if anything, did you observe regarding Agent DiGravio and the other subjects?

A All four were in conversation.

Q Were you able to overhear the conversation from where you were seated?

A No, I was not.

Q Am I correct that you had to glance over your left shoulder in order to observe them?

A That's correct.

Q And you were in there approximately ten minutes?

jglm

Whelan-direct/cross

250

1 A That's correct.

2 Q To the best of your recollection, what was the
3 total amount of time that you spent in glancing at the
4 subjects?
5

6 A I spent as much time as I could, probably more
7 than half. But it would just be snatching seconds at a
8 time, because it would be too obvious.

9 Q Could you offer an approximation as to the time?

10 A Perhaps 70 percent.

11 THE COURT: Seventy percent what?

12 THE WITNESS: Of the time I was there.

13 THE COURT: You spent 70 percent of the time
14 that you had been there with your head turned over your
15 shoulder?

16 THE WITNESS: Back and forth, both ways, turning
17 around, bending over, picking things up.

18 MR. DUHAMEL: No further questions.

19 MR. JACOBS: May I inquire, your Honor?

20 THE COURT: Please.

21 CROSS-EXAMINATION

22 BY MR. JACOBS:

23 Q Agent Whelan, we have never met before, have
24 we?

25 A No, sir.

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Whelan-cross

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Q You have testified previously in this matter,
have you not?

A That's correct.

Q I should say in a connected matter.

A That's correct.

Q Now, on the date in question, December 3rd of
1976, you had a group supervisor who supervised you, didn't
he?

A That's correct.

Q And that was Francis White -- Frank White.

A That's right.

Q When you arrived at the Burg-a-Cue Restaurant,
did you arrive with Agent White?

A I don't recall what car I was in. But we arrived
about the same time.

Q It is your testimony you don't recall whether
you were in the same car as Agent White.

A At the time of arrival, correct.

Q Now, did you observe Agent DiGravio enter the
restaurant?

A I did.

Q And about what time was that?

A Approximately 3:30.

Q And how long after that did you enter?

1 jglm

2 A About ten minutes, five to ten minutes.

3 Q About 3:40 or so you entered?

4 A Correct.

5 Q And where did you proceed as soon as you entered
6 the restaurant?

7 A I hesitated in the front so I could spot Agent
8 DiGravio and the others. Then I took up a spot as close
9 as I could to them.

10 Q The closest available seat at the counter to
11 the booth.

12 A Correct.

13 Q And how many people in the booth with you?

14 A From their booth, no more than ten feet.

15 Q In terms of distance, would it be approximately
16 the distance from myself to Mr. Duhamel as he is seated
17 here now?

18 A Probably a little less.

19 MR. JACOBS: May I approach Mr. Duhamel and
20 have the witness tell me when to stop when that approxi-
21 mates ten feet?

22 THE COURT: You can do that or you can ask him
23 in terms of those items over there which item is the same
24 distance away from him as they were.

25 Is that basket over there about as far away as

1 jglm

2 the table was?

3 THE WITNESS: I would give it another foot away
4 or so.

5 THE COURT: All right. Then the table behind
6 it then with the coat on it, that is the same distance
7 away. They were about that distance away?

8 THE WITNESS: Yes.

9 THE COURT: All right.

10 Q And you never overheard any of the conversation
11 among the people in that booth, did you?

12 A Nothing.

13 Q You don't know anything at all about what was
14 said?

15 A Nothing.

16 Q Did you know, at the time you were in the
17 restaurant, whether or not Agent White was in the restaurant?

18 A No, I didn't.

19 Q You never observed him at any time when you
20 were in the restaurant?

21 A No, I didn't.

22 Q Now, while you were in the restaurant -- for
23 approximately ten minutes, wasn't it? --

24 A Correct.

25 Q -- how many of those minutes did you spend observing

jglm

Whelan-cross

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Agent DiGravio and those around him?

A It was broken up. I spent, I think, roughly six, six minutes or so.

Q Would it be correct to say, Agent Whelan, that about 75 to 80 percent of the time you were in the restaurant was spent watching that particular table?

A Roughly.

Q So that would mean somewhere between seven-and-a-half and eight minutes, if it were a ten-minute period.

A All right.

Q And you saw Agent DiGravio at that table, did you not?

A I did.

Q Did you ever see a paper bag, a brown paper bag, on that table at any time?

A No.

Q Did you ever see a female hand anything to Agent DiGravio over that table?

A Nothing.

Q Did you ever see any pills in that restaurant on that date?

A Nothing.

Q Did you ever see any United States currency in the restaurant on that date?

jglm

Whelan-cross

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1

2

A Nothing. Not at that table.

3

4

Q Did you in fact -- by the way, how many surveillance have you been on involving alleged drug transactions?

5

A Hundreds.

6

Q Hundreds.

7

8

9

10

Did you at any time in those seven-and-a-half to eight minutes you glanced at that table see any actions, movements which would indicate to you that there was a drug transaction taking place?

11

A No, sir.

12

13

14

Q Did you ever see anyone at that table in a huddled or bent over position as if they were trying to conceal something?

15

A No, sir.

16

17

Q Did you ever see Agent DiGravio hold an amber bottle in his hand?

18

A No, sir.

19

20

Q Did you ever see him hold any tablets or pills of any kind in his hand?

21

A Nothing.

22

23

Q Did Agent DiGravio leave that restaurant before you or after you?

24

A After me.

25

THE COURT: How long after you left did he leave?

jglm

I took the bag from her. I opened the bag and started looking into it, put it on my lap, at which time I reached in and took out one bottle of pills. I poured out several of the tablets, observed them to be the type of tablet that I had been there to purchase, poured the tablets back into the paper bag -- back into the bottle, put the bottle back into the paper bag, folded the paper bag, and placed the paper bag on the table.

MR. DUHAMEL: May I approach the witness, your Honor?

THE COURT: Yes.

Q I show you what has been marked as Government's Exhibit 13 for identification and ask you if you have ever seen that before.

A I have.

Q How can you tell that?

A The bag is initialled and dated by me. The bottles have identification marks by me that I put on the bag and the bottles on the day that I purchased this on December 3rd, 1976.

Q Are you saying that that is the package and drug that you purchased from Leslie and Allan on December 3rd, '76?

A It is.

1 jglm

2 Q You indicated that when you gave the money to
3 Allan he fanned it. What specifically do you mean by
4 "fanning" the money?

5 A Well, I handed him the package of money, and
6 **with his thumb, and** holding it in one hand and his thumb
7 on the other, he kind of ruffled through it. He didn't
8 count each individual bill.

9 Q And then what did he do with the money?

10 A Put the money in his pocket.

11 Q And approximately how long did he hold the money
12 in his hands from the time you handed it to the time he
13 put it in his pocket?

14 A Fifteen -- ten, fifteen seconds after he put
15 the money in his pocket, as I said, Leslie handed me a
16 bag which contained the tablets. I checked them, put the
17 bag back up on the table, and it was at about this time
18 that Carol Clifford returned to the table and sat down.

19 Q Excuse me, Agent. You said that she handed you
20 a bag. Did she hand you anything other than a bag?

21 A She handed me the bag and also cupped in her
22 hand was a tablet. So that when I took the bag, the
23 tablet fell in the palm of my hand.

24 That's when I asked her if the pills were pharma-
25 ceutical or bootleg. I wasn't interested in the one

1 jglm DiGravio-direct 349
2 tablet she handed me. It could be almost anything. I was
3 more interested in what I was paying \$900 for, which was
4 supposedly in the bag. That's when I opened the bag and
5 checked one of the bottles, several of the pills in the
6 bottle.

7 Q Now, during the time of this conversation with
8 Leslie, where was Allan in relation to you?

9 A Sitting right next to me, on my left.

10 Q Are you prepared to state, within six inches,
11 12 inches?

12 MR. JACOBS: I'll object to the leading.

13 THE COURT: How far away was he?

14 THE WITNESS: On a couple of occasions his knee
15 touched me. I mean he was within an inch or two.

16 Q What happened at that point when Carol Clifford
17 returned to the table?

18 A As I said, Carol Clifford returned to the table
19 and at this time Allan asked me how many Quaaludes I would
20 be capable of purchasing per week. I told him that, you
21 know, I could handle **four or five thousand per week if I**
22 **could obtain a better price.**

23 There was a discussion about the price and Leslie
24 stated that the price would remain at \$3 per tablet no
25 matter how much I purchased.

jglm

DiGravio-direct

350

1 I made objections to the price. Allan stated
2 that he didn't want to bother selling a few hundred at a
3 time, and I stated that I was more than confident that I
4 could handle the three, four, five thousand Quaaludes per
5 week.
6

7 Q Was there any discussion at that point regarding
8 what you intended to do with the drugs?

9 MR. JACOBS: I object as leading, your Honor.

10 THE COURT: Yes. Don't lead.

11 What further discussion took place?

12 THE WITNESS: As we were still sitting at the
13 table, I informed Leslie and Allan that I would contact them
14 in a few days. I stated that I was bringing the sample of
15 Quaaludes to some people out in Long Island to show them the
16 type of product that would be available, that if they liked
17 the Quaaludes I would contact Leslie once again and put in
18 another order.

19 Allan inquired of me as to where I was going out
20 on Long Island with the Quaaludes, because he stated he did
21 not want to cause a conflict. I asked him, you know, what
22 he meant by "a conflict," and he stated he did not want to
23 cause a conflict and where was I going with the Quaaludes out
24 on Long Island?

25 I told him I was going to give them to some people
out in Suffolk County. He told me that there had

* * *

* * *

1 jglm Alvarez-direct 420

2 there a time when Mr. Sonnenschein appeared at that same
3 hotel room and entered into the room?

4 A Yes. About five to ten minutes later, after
5 I arrived.

6 A And was Leslie Triffleman still in the room
7 at that time?

8 A She was.

9 Q And what was her apparent mental state, if you
10 could ascertain it at the time?

11 A Very upset.

12 Q All right. Could you tell the jury what Leslie
13 Triffleman said to the defendant while you were present?

14 A She said, "I'm sorry I got you into this.
15 I'm sorry that I -- that I got you into this." She
16 said that twice.

17 Q Twice she said it?

18 A Right. She said "Allan, I'm sorry I got you
19 into this. I'm sorry about all of this."

20 Q Mr. Alvarez, you know basically what the
21 defendant Mr. Sonnenschein is charged with having committed
22 here.

23 A I do.

24 Q When did you first hear about the charges made
25 against Mr. Sonnenschein?

* * *

United States of America vs.

DEFENDANT

ALLAN SONNENSCHIN

DOCKET NO.

876 Cr. 1141

In the presence of the attorney for the government
the defendant appeared in person on this dateMONTH DAY YEAR
May 24, 1977

COUNSEL

☐ WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL

Steven Laifer, Esq.

(Name of counsel)

PLEA

☐ GUILTY, and the court being satisfied that
there is a factual basis for the plea☐ NOLO CONTENDERE.☐ NOT GUILTYThere being a ~~XXXXXX~~ verdict of☐ NOT GUILTY. Defendant is discharged
☒ GUILTY.FINDING &
JUDGMENTDefendant has been convicted as charged of the offense(s) of Conspiracy with intent to
distribute Schedule II controlled substance. (Title 21, United
States Code, Section 846.)SENTENCE
OR
PROBATION
ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of THREE (3) YEARS on Count, pursuant to Section 3651 of Title 18, United States Code, as amended, with provision that defendant be confined in a JAIL TYPE or treatment institution for a period of THREE (3) MONTHS as provided in the aforesaid section. Execution of the remainder of the prison sentence is suspended, and the defendant is placed on probation for a period of THREE (3) YEARS to commence upon expiration of confinement, and subject to the standing probation order of this Court. Defendant is also sentenced to a THREE (3) YEAR SPECIAL PAROLE, pursuant to Title 21, United States Code, Section 841, to run concurrently with probation.

SPECIAL
CONDITIONS
OF
PROBATION

Count 2 is dismissed on defendant's motion with consent of the Government.

ADDITIONAL
CONDITIONS
OF
PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT
RECOMMEN-
DATION

The court orders commitment to the custody of the Attorney General and recommends.

It is ordered that the Clerk deliver
a certified copy of this judgment
and commitment to the U.S. Mar-
shal or other qualified officer.

MICROFILM

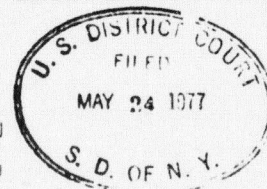
JUN 1 1977

SIGNED BY

☒ U.S. District Judge☐ Magistrate

GERARD L. GOETTEL, U.S.D.J.

Date 5/24/77



COURT OF APPEALS - SECOND CIRCUIT

UNITED STATES OF AMERICA,

Appellee,

- against -

ALLAN SONNENSCHEN,

Defendant-Appellant.

Index No.

Affidavit of Personal Service

STATE OF NEW YORK, COUNTY OF New York

SS.:

I, Victor Ortega, being duly sworn, depose and say that deponent is not a party to the action. is over 18 years of age and resides at 1715 Lacombe Avenue; Bronx, New York

That on the 8th day of September 1977 at 1 St. Andrews Plaza New York, N.Y. deponent served the annexed Appendix Brief upon Robert B. Fiske Jr.

the in this action by delivering a true copy thereof to said individual personally. Deponent knew the person so served to be the person mentioned and described in said papers as the attorneys herein.

Sworn to before me, this 8th day of September 1977

Victor Ortega
Victor Ortega

Robert T. Brin

ROBERT T. BRIN
NOTARY PUBLIC, State of New York
No. 31-0418950
Qualified in New York County
Commission Expires March 30, 1979